

January 24, 2005

Dear Legislator:

As you begin the 2005 General Session, you are faced with many challenges. We, in the Legislative Auditor General's Office, can provide you with information to help you deal with many of these problems. Our work, as represented in the enclosed *Thirtieth Annual Report*, suggests ways to reduce costs, increase revenues and improve program effectiveness.

Our audits have determined ways to reduce costs or increase revenue in providing technology equipment for public education and delivering secondary water to local municipalities and other users. In two other examples, we have recommended ways to increase the effectiveness of the construction of state buildings and the administration of the State Deaf and Blind School.

We hope that you will find the information contained in our *Annual Report* helpful. If you would like to discuss any matter further, please contact us.

Sincerely,

John M. Schaff CIA
Auditor General

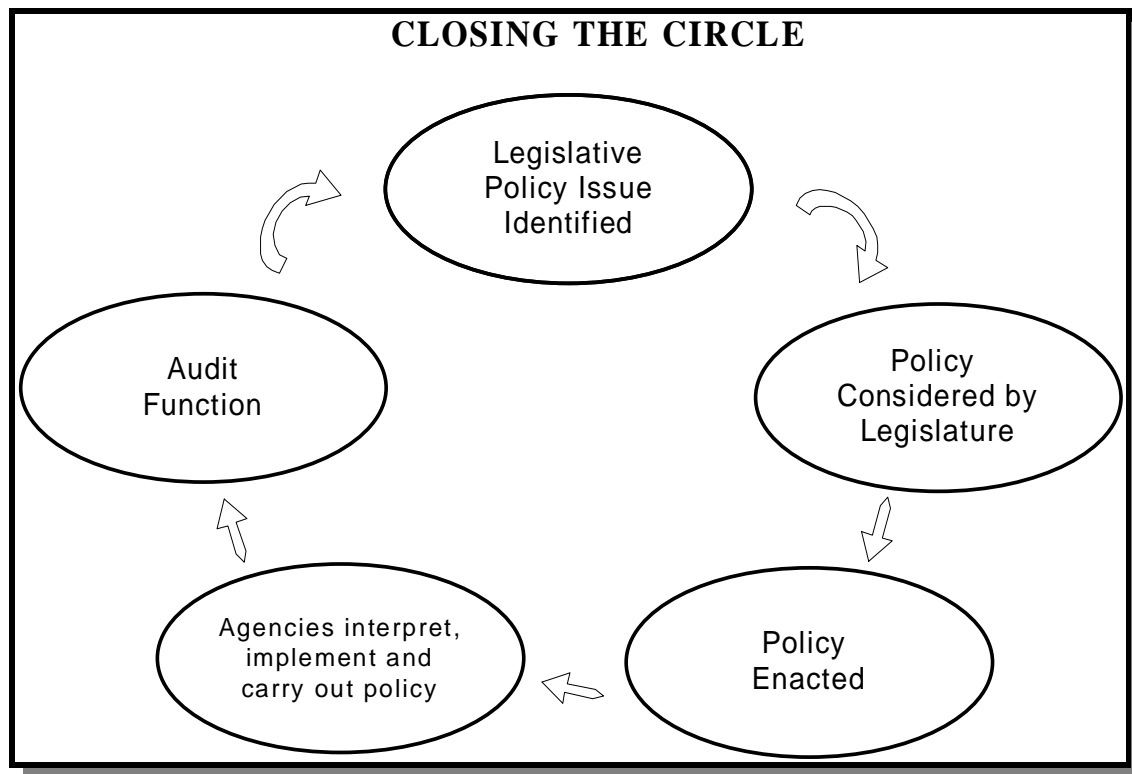
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Enclosure

Introduction to the Auditor General's Annual Report

Performance audits help legislators resolve the difficult issues facing them. In a variety of areas, the audits conducted by the Legislative Auditor General's Office over the past 30 years, examine the operations of state programs. The office reviews and evaluates the programs, seeing how they are being implemented, testing whether they are being operated at the lowest possible cost, and evaluating if they are successfully attacking the problems leading to their creation. These audits offer the legislators another important source of information as they attempt to solve pressing problems.

This process is called "closing the circle". (See diagram). It delivers information about the programs conducted by state departments and institutions, as well as school districts and state colleges and universities, to those who set policies and grant funds. This process works this way: (1) policy issues are identified for consideration by the Legislature, (2) the Legislature considers several alternative approaches, (3) the Legislature enacts legislation to address those issues, and then (4) the agencies interpret, implement, and carry out the policy. Performance and program auditors observe the agencies, and determine how well their interpretation, implementation, and policy follow-through are done. In turn, the auditors make recommendations to the Legislature from the new issues identified in the audit process.



A performance audit can serve one or more of the following functions. The audit may show an agency or program is more expensive than it needs to be; is it operating **efficiently**? It may indicate places where an agency or program is not fulfilling its mission and serving the public; is it **effective**? An audit may point out problems with interpreting the Legislature's intent when it created an agency or program; is it **complying** with the law? All this information is given to legislators in performance terms so they can judge for themselves what actions now need taking.

Performance audits have had a significant impact on the operations of state government. Since its creation in 1975, the Office of the Legislative Auditor General has identified possible cost savings and revenue increases totaling almost **\$160 million**.

In the past year, this office has completed audits in many areas of concern. For example, our audits have determined ways to reduce costs or increase revenue in providing technology equipment for public education and delivering secondary water to local municipalities and other users. In two other examples, we have recommended ways to increase the effectiveness of the construction of state buildings and the administration of the State Deaf and Blind School.

The main sections of this report summarize our recommendations for legislative action, the audits themselves, and the other audits in process. Legislative audit reports give legislators information concerning the way state agencies and programs operate. The reports suggest ways for improving government operations by providing legislators with feedback concerning the efficiency, effectiveness, and compliance of state agencies and programs. They also evaluate the strengths and weaknesses of management control systems, or how well an agency or program evaluates and corrects itself. The final result of this effort is more efficient and effective use of the resources provided by the Utah taxpayers.

The staff of the Legislative Auditor General's office is willing to meet with legislative committees and/or individual legislators to explain further the results of their performance audits. In addition, copies of reports issued by the office are available to legislators and interested citizens upon request or on our Internet web site:
www.le.state.ut.us/audit/olag.htm.

Our office (W315 State Capitol Complex) is in the new West Building, behind the State Capitol Building, on the third floor.

Audit Subcommittee of the Legislative Management Committee

**President John Valentine, Co-Chairman
Senate President
(R) Utah**

**Speaker Greg J. Curtis, Co-Chairman
Speaker of the House
(R) Salt Lake**

**Senator Mike Dmitrich
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I. The Role of the Legislative Auditor General in Utah State Government

The purpose of performance audits conducted by the Office of the Legislative Auditor General is to help legislators oversee and evaluate state agency operations and state program results. The basic questions these audits answer are:

- Is an agency being run as efficiently as it could be?
- Is a program meeting the needs of the public?
- Is an agency or program serving as the Legislature intended?

The Office of the Legislative Auditor General wants to be responsive to the needs and concerns of legislators, as well as Utah taxpayers. It conducts audits by the request of members of the Legislature, allegations raised by the public, or concerns raised from previous audits.

Audits fall into three categories:

Operational Audits--determining if an agency is operating at the least possible cost to the taxpayer.

Program Audits--determining if state programs are meeting their objectives.

Compliance Audits--determining if administrators are following what the legislators intended.

So how does the Legislative Auditor General's office go about checking to see if agencies and programs are functioning as they should? Just how is an audit conducted? Once an audit request has been reviewed and approved by the Audit Subcommittee, auditors are assigned to a project. A first consideration in assigning auditors is who is available, but much attention is paid to auditors' skills and strengths too. The audit team gets together to talk about the audit and the kind of things to look for once it starts work "in the field." Some of the discussion will be based on why the audit was requested, and planning ways to find out if the complaint(s) can be supported with evidence. Once the "conceptualizing" is completed, the team meets with the director and key staff of the agency. Introductions are made, office space is set up, and general audit procedures are explained.

The next step is conducting a preliminary survey. Quick tests are set up to see how valid the complaints are. If the audit is not the result of allegations, the team sets up tests based on what it has discussed and decided might be areas worth investigating. These tests give a quick review and check of management control. From the survey or "risk assessment," the investigation can be channeled into areas needing further and more extensive investigation. The results of the investigations are called audit findings, and five elements compose any finding.

The first element of an audit finding is termed the statement of condition. It describes what exists, what is happening in a program or agency. The next element is criteria. Criteria are measures that are used to decide if the agency or program is meeting its goals. Third is effect--asking the question "so what?" Effect is a measure of the difference between the desired (criteria) and the actual (statement of condition). Usually the hardest to prove is cause, or why the effect happened. To make a finding real, an auditor must show the cause of the problem because the cause leads to the last element; the recommendation. Plans must be made to correct the deficiency or there is no purpose for doing an audit.

Various methods are used to develop the findings. Sometimes an auditor uses accounting and financial methods to show findings in cost areas. Sometimes procedures such as flow-charting are done to show up weaknesses in work processes. Employee activities are observed, or employees might be interviewed by an auditor. Auditors like to ask a lot of questions because they are not experts in every field they may be auditing. They do have skills in recognizing good management practices because the results are about the same everywhere.

That is what performance auditing is really about—recognizing good management practices. Legislative auditors are the watchdogs of state government. They ensure state agencies and programs are carried out as they were intended, in an efficient way, and serving the public in the most effective way known.

II. Summary of Audit Recommendations for Legislative Action

This section identifies the issues and recommendations requiring legislative action. (Other recommendations and report summaries can be found in Section III.) We believe the issues we have identified in our reports are important to you as legislators. We urge that the appropriate committees take a careful look at our recommendations and our reasons for making them.

Each recommendation is based on the condition we observed, the measure and standard used to assess the condition, and the effect of the condition on the efficiency and/or effectiveness of the agency.

Issues and recommendations are organized by legislative committee. Within each committee group, the audit reports follow in the order they were issued.

We will be happy to meet with any committee, legislator, or citizen to explain further any part of our reports.

Education

A Follow-up Audit of Medical School Admissions (2003-07)

1. We recommend that the Legislature ask the School of Medicine to present evidence supporting its diversity policy and the educational benefits that it hopes to achieve through that policy.

Rationale: If the School of Medicine wishes to continue to consider an applicant's diversity during the admissions process, it will need to first define what it means by diversity and provide the Admissions Committee with a systematic way of identifying applicants that meet the criterion. Second, they need to inform applicants that they will be considered in terms of the diversity they will bring to the class of students and provide the applicant with a means of demonstrating their ability to add diversity. Third, the school should demonstrate the basis for its decision to emphasize diversity and the educational benefits that it hopes to achieve through its policy.

Utah School of the Deaf and Blind (2004-01)

1. We recommend that the Legislature consider placing fiscal management under the USOE.

Rationale: Fiscal management of the Utah School of the Deaf and Blind (USDB) needs to be improved and monitored more closely by the State Board of Education. By placing fiscal management of USDB under the Utah State Office of Education (USOE), the USOE could provide the USDB with a stronger financial manager. This new arrangement would also help the State Board increase its oversight activity over the finances of the USDB.

Utah's Use of the Federal E-rate Program (2004-10)

1. We recommend that the Legislature direct the Utah State Office of Education (USOE) to collect from the school districts data on telecommunication costs as a separate object of expenditure. This data should then be shared with the Utah Education Network (UEN) for analysis.

Rationale: Most school districts have not been maximizing E-rate reimbursements. The collection of telecommunication cost data will help bolster E-rate reimbursements in two ways. First, UEN's analysis of the data will bring a measure of accountability to the E-rate collection process. Second, the UEN can use this information to provide district E-rate managers recommendations as to how to improve their E-rate collection.

Health and Human Services

Utah's Local Mental Health Systems (2003-05)

1. We recommend that the Legislature direct the Utah Retirement Systems to study the issue of a retention incentive plan to determine whether this practice is acceptable and then report back to the Legislature.

Rationale: One mental health center's development of a retention incentive plan combines early retirement and return to work provisions into a costly

policy offered only to senior executive staff. While the plan appears to follow statute, the intent of the Legislature has been circumvented, and significant monetary gain has been provided to a select group of senior executives.

2. We recommend that the Legislature direct the Utah Retirement Systems to review the practice of processing non-employees through a participating employer's payroll to determine whether this practice is acceptable and then report back to the Legislature.

Rationale: Four non-employees have been put on a mental health center's (MHC's) payroll, allowing them to receive state retirement benefits. Though the number of people involved may not be enough to cause a problem with the retirement system, this practice sets a precedent of some concern. If other participating employers chose to bring non-employees into the retirement system, actuarial changes could affect costs to current system participants.

Judiciary

A Performance Audit of the Judicial Conduct Commission (2003-10)

1. We recommend that the Judicial Conduct Commission (JCC) and Legislature work together to establish guidelines for the use of informal reprimands.

Rationale: We suspect there were fewer actions taken in fiscal years 2002 and 2003 because the Commission believed there were no available private sanctions in judicial discipline proceedings before filing of formal charges. The majority of other states have private sanctions available. The JCC believes they only have two options: dismiss cases or go to formal charges. Consequently, for minor infractions that the commission does not believe rises to the level of sanction, the complaint is simply dismissed. In prior years Utah, like most other states, routinely sent letters of caution for minor misconduct to judges.

Retirement and Independent Entities

Public Employees Health Program (PEHP) and Children's Health Insurance Program (CHIP) (2003-09)

1. We recommend that the Legislature continue to review employee compensation packages and make benefit and salary adjustments as necessary.

Rationale: Benefits provided to state employees by PEHP compare well when measured to the local insurance industry and other states' insurance plans. PEHP offers comprehensive and competitive health, dental, and life insurance to State of Utah employees and their families. Overall, PEHP appears to control their costs and provides excellent insurance benefits to state members. Benefits should be considered along with salaries in determining whether any compensation changes are justified.

Revenue and Taxation

Tax Commission's Division of Taxpayer Services (2003-08)

1. We recommend that the Legislature consider forming a study committee to review issues of lien prioritization, statutory time limits on lien placement, the length of time a lien remains enforceable, and other statutory tax areas deemed appropriate for review.

Rationale: There are specific areas in the Tax Commission's use of liens, beside our analysis of expired lien review, that need attention. Specifically a task force could review whether they can improve: (1) the ability to maintain priority placement on a lien, (2) the statutory ability to place liens, and (3) the length of time that a lien remains legally enforceable.

2. We recommend that the Legislature and the Tax Commissioners determine whether the measures of productivity and accountability recommended by management are acceptable.

Rationale: Since it is the function of the Tax Commission to collect taxes, dollars collected should be used as an indicator of productivity. In our opinion, the division and department leadership should consult with both the Legislature and the Tax Commissioners and obtain direction regarding the use of this indicator.

3. We recommend the Legislature consider reviewing the appropriateness of the Tax Commission's level of aggressiveness, particularly as it pertains to collection of delinquent tax. We further recommend the Legislature determine whether additional policy direction is needed for the Tax Commission.

Rationale: As of December 2002, there was \$265 million in outstanding potential state revenue in the thousands of active delinquent tax collections accounts. Because of this substantial potential revenue which remains uncollected, it seems an opportune time for the Legislature to determine whether current Tax Commission collections policies and procedures are being pursued aggressively enough. In light of our findings and because this is a clear policy issue, we believe it would be appropriate to refer the discussion of the Tax Commission's level of aggressiveness—particularly with regards to delinquent tax collections—to the Legislature.

Division of Motor Vehicles (2004-02)

1. We recommend that if the Legislature chooses to allocate Department of Motor Vehicle (DMV) costs to user agencies that they select a process-based cost identification system to better reflect the actual cost of fee collections.

Rationale: The allocation of DMV's costs has been based on legislative-determined appropriations and dedicated credits from the various beneficiaries. However, these allocations are not based on actual identified costs and, as a result, are not very defensible. In fact, the Department of Transportation recently raised concerns about the equity of the cost allocations. The Legislature can address this problem by implementing a process-based cost allocation system. Under this type of allocation system, the beneficiaries' share of the cost is directly tied to the operational time and effort associated with fee collections for that beneficiary. Further, by having the beneficiaries pay the full cost of DMV's collection efforts, the General Fund would be relieved of pressure to cover funding shortfalls.

2. We recommend that if the Legislature chooses a process-based cost allocation that direct motor vehicle costs contained within other Tax Commission divisions be included in the cost allocation.

Rationale: The DMV is not a stand-alone entity. It is part of the Tax Commission and receives substantial motor vehicle support from the other Tax Commission divisions. Previous cost allocations have not included out-of-division motor vehicle costs and these account for 21 percent of the total cost of collecting motor vehicle fees. If these out-of-division costs are not allocated to the beneficiaries, then the possibility that the General Fund will be required to cover DMV funding shortfalls is increased. The Legislature can address this possibility by requiring that all direct motor vehicle collection costs be included in the cost allocation.

Transportation, Public Utilities & Technology

Department of Environmental Quality's Commercial Waste Facility Oversight (2004-06)

1. We recommend the Legislature review the *Utah Code* outlining the Environmental Quality Restricted Account (EQRA) to clarify legislative intent.

Rationale: Revenue streams from the waste disposal fees on commercial radioactive and hazardous waste are deposited into the EQRA. Due to the fees being placed on fluctuating waste streams, revenues have fluctuated and have been insufficient to cover the costs of facility monitoring. Clarification of legislative intent is needed if fees on the commercial radioactive, solid and hazardous waste are meant to cover the costs of monitoring these facilities.

2. We recommend the Legislature study the Division of Solid and Hazardous Waste's (DSHW) penalties to determine appropriate maximum fine levels.

Rationale: Utah's maximum penalty of \$10,000 for violations has not been updated since 1981. Utah is required to have a penalty amount not to exceed that of the EPA. However, the EPA has adjusted their penalty amounts for inflation over the years. The EPA's maximum amount has been raised to \$32,500, as of the audit release date. If penalties are meant to be a deterrent to wrong behavior, then perhaps the maximum penalty amount should be raised.

3. We recommend that the Legislature review *Utah Code* 19-6-118, regarding generator fees, and clarify its intent.

Rationale: Statute requires waste generators disposing waste in Utah to pay certain fees based on the type of waste. There are four types of waste. Sometimes waste streams fall under more than one category. The DEQ had an informal policy to collect only the highest fee of the waste that falls under multiple fee categories. We found that facilities do not always pay the high fee. At times, facilities have paid a lesser fee when multiple fees are called for. The state's informal policy, in combination with facility reluctance to at least pay the higher fee, has resulted in a loss of fee revenue which can limit state oversight of facilities. Clarification is needed whether all the fees should be applied to the types of waste.

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III. Summary Of Audits Completed

Each audit completed during 2004 is reported in this section. Also included are follow-ups on the 2003 audits completed late in that year. For each audit, we have listed our recommendations and the actions taken by the agency in implementing the recommendations. Because of the time frames involved, some agencies have had a long period for implementation, and others are now just developing programs to deal with the recommendations.

First, the audited agencies each have short explanations describing their functions. Second, are the main findings of the audit teams. Last, are the lists of specific recommendations and what implementation has taken place so far.

As in the previous section, the subsections are organized by legislative committee. Within each function, the audits or follow-ups are listed as they were completed.

Education

A Follow-up Audit of Medical School Admissions (2003-07)

The University of Utah School of Medicine has carried out most of the procedural recommendations described in our January 2002 audit of its admissions process. Even so, the School of Medicine has not realized a substantially different class selection. The school's goal to enroll a diverse student body continues to produce a high rate of admission among female and minority applicants. The consideration of an applicant's diversity in terms of race and gender is a common practice among graduate schools nationwide and has received support from a recent U.S. Supreme Court decision. Officially, however, the School of Medicine does not consider race and gender as indicators of diversity. For this reason, the court's ruling may have little bearing on the school's admissions policies.

In January 2002, the Office of the Legislative Auditor General issued a report titled **A Performance Audit of Medical School Admissions** (Report #2002-01). The report describes many ways in which applications were not handled according to the school's admissions policies. For example, some applicants who were initially

considered unqualified by the Review Committee were granted interviews anyway and some were accepted. On the other hand, some qualified applicants were not considered by the selection committee. We also found that one of the school's goals was to select a class of students "that reflects the diversity of the population as a whole." Due to its focus on diversity, the school accepted female and minority applicants at a much higher rate than white or male applicants.

A few months after the release of the prior audit report, the Higher Education Appropriations Subcommittee asked the Legislative Auditor General to conduct a follow-up audit and verify whether the School of Medicine has implemented the audit recommendations. The following describes the main findings of the followup audit:

Admissions Process Need Additional Improvements

During the past year, the School of Medicine has made considerable progress toward addressing the procedural problems described in the prior audit report. The School has improved its admissions procedures and, for the most part, applications are handled as required by policy. We did, however, find that the selection criteria could be applied more consistently. Furthermore, the school needs to do more to reduce the number of applications that are eliminated during the initial stages of the admissions process. Finally, we are concerned that the School of Medicine is not giving adequate consideration to each applicant's academic record and risks admitting students who may have difficulty with the school's rigorous academic course work.

Diversity Remains a Primary Consideration

Due to the school's continued focus on diversity, we found that women and minorities continue to be admitted at higher rates than white male applicants. For example, 77 percent of the minority female applicants were accepted but only 26 percent of the white male applicants were accepted. Although the School of Medicine prohibits the consideration of either the race or gender during the admissions process, a special emphasis is placed on seeking students with diverse backgrounds and experiences. Often, it is the women and minority applicants that are viewed as having the most diverse backgrounds and experiences. Furthermore, some members of the Admissions Committee still consider race and gender to be primary indicators of an applicant's diversity.

School Should Identify the Basis for its Selection Criteria

The audit report also identifies a need for the school to demonstrate the basis for the criteria it has selected for its admissions process. Whether it be its diversity policy

or its position regarding grades and MCAT scores, the school should make an ongoing evaluation of which factors best predict success as a physician.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations	Reported Actions
1. We recommend that the School of Medicine continue to explore ways to eliminate more applications during the review and interview phases of the admissions process.	1. Implemented
2. We recommend that the School of Medicine provide training to interviewers regarding the selection criteria they must use to evaluate applicants and that admissions staff review the interview comments to verify that the interviewer has proper support for his or her recommendation.	2. Implemented
3. We recommend that the Admissions Office develop a quality control process to ensure that the Admissions Committee is complying with the school's admissions policies and are correctly applying the selection criteria.	3. Implemented
4. We recommend that the Review Committee be given the responsibility for examining the full academic record of each applicant and eliminate those applicants who have relative poor academic qualifications.	4. Implemented
5. We recommend that the School of Medicine begin collecting residency	5. Implemented

Recommendations

Reported Actions

reports each year and that they use those reports to verify which of its selection criteria best predicts a student's success as a physician.

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| 6. We recommend that the School of Medicine better define the characteristics they seek in a diverse class of students and that they develop systematic way of identifying the extent to which a student will add diversity. | 6. Implemented |
| 7. We recommend that the School of Medicine disclose to applicants that they will be evaluated in terms of the diversity that they offer to the class and that applicants be given an opportunity to demonstrate how they might add diversity. | 7. Implemented |
| 8. We recommend that the School of Medicine identify the intended benefits of its diversity program and conduct research that documents the extent to which those goals have been met. | 8. Implemented |
| 9. We recommend that the Legislature ask the School of Medicine to present evidence supporting its diversity policy and the educational benefits that it hopes to achieve through that policy. | 9. Implemented |

Utah Schools for the Deaf and Blind (2004-01)

This report addresses some of the specific concerns of state legislators regarding the

Schools for the Deaf and the Blind (USDB). The report also describes several management practices that can be improved at the school. Specifically, the school's administration overstated the claim that its year-end cash balance is primarily made up of restricted funds. In fact, contrary to what they told legislators, the school actually has broad discretion in how it uses its cash reserves. Furthermore, the school has not always followed the guidelines described in statute for adjusting teacher salaries each year. To address these concerns and the other broad management issues described in this report, the State Board of Education will need to increase its oversight of the school.

The following summarizes the key findings:

USDB Had Sufficient Funds to Avoid Making Cuts in Staff. The USDB overstated its claim that it was forced to leave vacant six instructor positions in order to comply with the cuts imposed during the Legislature's July 2002 special session. Even after the Legislature reduced the school's non-lapsing balance by \$880,000, the USDB still began fiscal year 2003 with an additional \$850,000 in surplus funds. We found no support for the claims made by school officials that most of the surplus funds were legally restricted or otherwise committed. In addition to its surplus funds, the USDB also had access to a large amount of federal funds that were owed to the school but not collected. We found that the school had sufficient funds to fully staff its faculty during fiscal year 2003, but instead chose to leave nine positions vacant.

Salary Adjustment Needs to Comply with Established Procedures. During the past two years the USDB has not followed the process required by law for calculating its teachers' annual salary increase. When an adjustment was calculated for fiscal year 2003, mistakes were made that resulted in the teachers receiving less than they should have received. However, for fiscal year 2004, other mistakes were made that produced a greater salary increase than they should have received. Taken together, the mistakes largely balanced each other out.

Management of the School Can Improve. During our review of the overall management of the USDB, we identified three areas where the administration can improve. First, we found that USDB is not following some of the financial management practices that are considered appropriate by most school districts and state agencies. Second, we found that the outside oversight provided to USDB needs to improve. Either the State Board of Education (State Board) needs to be more involved, or the Institutional Council needs to be replaced with a strong governing board. Third, the school needs to do a better job of monitoring its effectiveness. The school does a good job of identifying specific education goals for each individual student. However, they can do a better job of reporting its success in accomplishing

those goals. The school should also consider to the individual education plans as they make decisions regarding how to allocate school resources.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations	Reported Actions
1. We recommend the USDB use the contingency fund as it was intended to supplement operations during years of budget shortage.	1. Implemented
2. We recommend the federal reimbursement funds (IDEA and Medicaid) be recovered at least quarterly during the year instead of waiting until the next fiscal year to recover the full amount.	2. Implemented
3. We recommend that the Utah State Board of Education define the appropriate use of USDB's Trust Land Funds so that there will be no misunderstanding regarding any restrictions placed on the use of those funds.	3. Implemented
4. We recommend that the process described in <i>Utah Code</i> 53A-25-111 be followed: (1) the State Board of Education must oversee the process of adjusting teacher salaries at the USDB and formally approve the salary adjustment, (2) the salary adjustment must equal the weighted average of the annual salary increases paid by the public school districts, and (3) the teachers must receive a benefit package that is comparable to those paid to other state employees.	4. Implemented

Recommendations

Reported Actions

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| 5. We recommend that the finance director at the USDB review the calculations used to determine the annual teachers' salary adjustment and attest to the accuracy of the proposed adjustment. | 5. Implemented |
| 6. We recommend that the proposed annual salary adjustment and the data used to calculate the annual salary adjustment be presented in a report as part of the USDB's annual budget proposal. The report should be presented for review by the Utah State Board of Education, the State Office of Education, and Legislative Fiscal Analyst. | 6. Implemented |
| 7. We recommend that if benefits are left out of a future appropriation, than the USDB should request a supplemental appropriation during the next special session or general session of the Legislature. | 7. Implemented |
| 8. We recommend that the USDB develop a spending plan and use this to govern their excess funds. | 8. Implemented |
| 9. We recommend that when a new finance director is selected the selection committee should consider a person with the experience, education, and training needed to navigate the complex finances of the USDB. | 9. Implemented |
| 10. We recommend that performance measures be instituted to track the progress of USDB students. | 10. Implemented |

Recommendations	Reported Actions
11. We recommend that State Board of Education provide more oversight, or the Legislature develop a body that can provide sufficient oversight.	11. Implemented
12. We recommend that the Legislature consider placing fiscal management under the USOE.	12. Implemented
13. We recommend that the USDB utilize the IEPs when making decisions regarding the allocation of school resources.	13. Implemented

\$23.7 Million Textbook Supplemental (2004-03)

The effectiveness of the \$23.7 million textbook supplemental provided by the 2001 Legislature does not appear to have been maximized. First, district textbook expenditures did not match the state's textbook expenditure efforts. Second, some districts may have used supplemental funds for purposes other than textbooks. Third, supplemental textbook funds were proportionally allocated—although auditors recommended a different methodology. Perhaps as a result of these three concerns, half of the 2000 textbook shortage was satisfied by 2003. The Utah State Office of Education (USOE) reported unmet textbook needs in October 2003; however, the methodology used for the estimate appears flawed.

District Textbook Expenditure Effort Did Not Match State Effort. Of the four years reviewed (2000 through 2003) district textbook expenditures were the lowest in fiscal year 2002, the year in which the supplemental was spent. This expenditure pattern was unexpected given the expressed concerns surrounding textbooks. The USOE explains that it was unrealistic to expect districts to increase their spending on textbooks in 2002 for the following reasons: 1) textbooks were only one of several critical spending needs, and 2) districts were not appropriated additional funding for ongoing textbook needs. The USOE also points out that, with the supplemental expenditure, spending for textbooks in 2002 nearly doubled over the prior year. Regardless, we believe districts should have increased, not decreased, their

textbook expenditures to complement large supplemental funds. For whatever reason, this did not occur.

Some Districts May Have Used Supplemental for Purchases Other Than Textbooks. When districts received their portion of the textbook supplemental, some districts indicated that they did not have significant textbook needs. These districts suggested that they would use supplemental funds for other needs. Ironically, two of these districts reported unmet textbook needs in 2003. Because of the nature of this follow-up audit, we were unable to pursue this area in detail. However, we are aware that some districts reportedly used the supplemental funds for teacher training, library books, and regularly scheduled textbook adoptions.

Supplemental Money Allocated Proportionally. The 2000 report recommended against using a proportionate methodology (i.e., one based on relative number of Weighted Pupil Units (WPU)) to allocate the textbook supplemental. Proportionate allocation does not correspond well to classroom needs—the basis of the \$23.7 million supplemental. However, the Legislature supported the methodology and the USOE proportionally allocated the textbook supplemental. Using one method to develop the estimate (i.e., specific classroom needs) and another method to allocate the supplemental (i.e., number of WPUs in elementary, junior high, and high school), does not promote maximum effective usage.

Half of 2000 Textbook Need Satisfied. Half of the textbook needs identified in May 2000 were satisfied by April 2003. We estimated the percentage by re-interviewing a sample of teachers from the original survey. Optimally, our analysis of the satisfaction of textbook need throughout the districts should have included textbook needs as identified by school districts. Unfortunately, though required by the *Utah Code*, the USOE did not request and, with few exceptions, the districts did not supply specific textbook needs. Comparisons of district-identified textbook needs with teacher-identified needs could not be made.

USOE Methodology for 2003 Unmet Textbook Need Appears Flawed. The USOE did not provide adequate guidance to school districts for a reliable 2003 unmet textbook needs estimate. As a result, districts adopted varying, and subjective methodologies. This lack of guidance caused one large district to misinterpret a critical question causing a \$2.5 million error to the USOE's \$9.5 million textbook estimate. Finally, the USOE's methodology produced two estimates of 2003 unmet textbook need which caused confusion.

There were no recommendations made in this audit report.

Utah's Use of the Federal E-rate Program (2004-10)

This is the first of two reports regarding technology in public education. This report will review concerns regarding the school districts' participation in the federally funded E-rate program. The E-rate program was instituted in the Telecommunication Act of 1996 to help bring Internet access to every school and library in the country by providing a discounted education rate (E-rate) for telecommunications expenses. The next report will provide information on teachers and students' access to technology and identify a number of best practices for districts to consider as they continue to move forward with technology.

Most Utah school districts have not taken full advantage of the Federal E-rate program and some still do not understand the potential of the E-rate program and what revenues it can provide for Utah's schools that struggle financially. Utah has received \$46 million in E-rate commitments since 1998 and their annual commitments have increased in each of the past three years. However, our best estimate shows that Utah may have been able to secure as much as \$47 million in additional commitments. We found that Utah's lackluster E-rate collection can generally be categorized into the following three areas:

- Many school districts are not receiving all possible E-rate reimbursements on telecommunication expenses largely because they have not submitted for reimbursement on all expenses.
- Most school districts are not taking advantage of a provision that allows them to apply for extra services for impoverished schools.
- Most school districts are not structuring contracts with telecommunications service providers in such a way that allows them to receive E-rate reimbursements on service, equipment and maintenance. Currently most districts only receive E-rate on service related charges.

These three issues are discussed in Chapters II and III. Chapter IV addresses coordination issues among school districts, the Utah Education Network (UEN), the Utah State Office of Education (USOE) and State Purchasing.

Utah's Use of the Federal E-rate Program Should Be Improved. Changing how Utah's school districts apply for Federal E-rate funds will help provide the additional money for telecommunications equipment and technology in Utah's schools. The existing system has many weaknesses because each school district seeks

reimbursement from the federal government and most districts have ineffective policies and practices to request all funding to which they are entitled. District leaders and program directors in some districts also lack the appropriate understanding of the program to make informed decisions regarding its use. We estimate that since Fiscal Year 1999, as much as \$47 million may have been lost in the ineffective practices used by Utah's school districts. The most effective way to improve system efficiency would be for school districts to submit all eligible expenses.

More Opportunities Exist to Collect Additional E-rate Revenues. Most Utah school districts have not taken advantage of all opportunities to collect E-rate funds. Most districts can increase the funding they receive from the federal E-rate program and thereby get much needed funds for the technology needs of public education. This chapter illustrates two ways that districts can increase their E-rate funding. The first way to increase funding would be for districts to apply for Priority Two funds that are earmarked for impoverished schools. Priority Two funds were only requested for six percent of the impoverished schools in the state. Raising the awareness of the program and applying for Priority Two funds for the other 94 percent of impoverished schools will provide great benefits to those schools. The second way to increase funding would be for districts to move toward end-to-end service contracts. Implementing this new coordinated model of service will provide financial and service benefits to the statewide public education system.

E-rate Should Become a Priority and Statewide Coordination Should Increase. Making E-rate a priority in each school district and increasing the cooperation and coordination of various employees and the E-rate coordinator will give E-rate the needed visibility to make it a potent funding source. Currently, one employee in each district is responsible for E-rate and he/she may not have the knowledge, experience, or authority to maximize the E-rate reimbursements. In addition, state agencies with influence over E-rate are not coordinating their efforts. Coordination with state purchasing can further assist districts with the E-rate process. Also, UEN and USOE should work together to improve telecommunication cost accounting and eligibility measurements for the National School Lunch Program that dictates the amount of reimbursement districts receive.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations

1. We recommend that school districts submit for all eligible telecommunications costs.
2. We recommend that school districts track all telecommunication expenses, maintain copies of invoices and provide this documentation to those filing for E-rate.
3. We recommend that all districts apply for Priority Two funds for their impoverished schools.
4. We recommend that the UEN and the school districts move toward the proposed coordinated network model. The following points should be included:
 - The UEN will provide a statewide network for all public schools in the state.
 - To the extent feasible, the UEN will provide the network based on end-to-end service contracts.
 - School districts will pay the UEN the net cost of providing the network to elementary schools.
 - The UEN will take into consideration the individual needs of districts.
5. We recommend that districts restructure the E-rate position at the district level to give the manager maximum visibility and support within the district.

Reported Actions

1. This report was completed in December 2004. Follow-up will be performed in 2005.

Recommendations

Reported Actions

6. We recommend that the Legislature direct the USOE to collect from the school districts data on telecommunication costs as a separate object of expenditure. This data should then be shared with the UEN for analysis.
7. We recommend USOE institutes a survey to more accurately measure the National School Lunch program eligibility.

Government Operations & Political Subdivisions

Division of Information Technology Services (2003-06)

At the request of the Executive Appropriations Committee, we reviewed three allegations concerning management operations within the Division of Information Technology Services (ITS). These allegations were brought forth by ITS employees who were concerned about the appropriateness of some management activities. The Department of Administrative Services (DAS) also looked into these allegations and initiated procedural changes as a result of their findings. Based on our review, we found the following:

Unjustified ITS Software Purchases Resulted in \$1.7 Million Misspent. The implementation of three products purchased in fiscal year 2002 is very doubtful. In all three cases, the purchases were made with little analysis done to insure the appropriateness of each purchase. An inadequate pre-purchase analysis increases the risk of making a purchase that is imprudent in some regard (e.g., departmental needs not met, costs unrecoverable). Further, all three purchases were procured in a non-competitive manner even though competition existed. When purchases are made in a non-competitive fashion, the state has a greater risk of not getting the best product for the best price.

Chief Technical Architect May Have Benefitted His Son with State Business.

First, total ITS payments to Vendor D (the son's employer) rose from a yearly average of \$415,000 in fiscal years 1999 and 2000 to \$1.4 million in fiscal year 2001—the first year the chief technical architect's son was employed by this vendor. Second, the two questioned purchases, which totaled approximately \$1.1 million, were done quickly with an inadequate supporting analysis. Third, these purchases were procured through sole-source contracts which raise questions. The chief technical architect (who is also an ITS deputy director) stated that the two purchases in question were coincidental with his son becoming Vendor D's state sales representative.

Issuance of Gag Order Unlikely. First, while two instances were identified at which a possible gag order was issued, different employees interpreted the messages conveyed differently. Second, of the thirteen ITS employees interviewed, only two (15 percent) believed that a gag order had been placed on ITS employees. Consequently, this issue was not pursued further.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations	Reported Actions
1. We recommend that ITS develop and follow a process which allows ITS to assess the prudence of a purchase prior to the purchase.	1. Implemented. A business case analysis is now required on all projects exceeding \$50,000.
2. We recommend that DAS administration and the Division of Purchasing's director develop and follow controls which increase the oversight of the Division of Purchasing.	2. Implemented. For ITS purchases exceeding \$50,000, the director of the Division of Purchasing shall insure that a favorable business case analysis and needs assessment was completed that justifies the purchase.
3. We recommend that the Division of Purchasing develop and follow specific guidelines as to the circumstances under which a vendor's master license agreement may be extended to include other products.	3. Implemented. A notice of all proposed expansions is now distributed by e-mail to all known suppliers for comment. Also, all expansion amendments must be approved by the director of the Division of Purchasing.

Recommendations

4. We recommend that the DAS administration and the Division of Purchasing review and develop more stringent controls concerning the circumstances under which a sole-source contract will be awarded.
5. We recommend that ITS perform a thorough cost-benefit analysis on all relevant options prior to purchase.
6. We recommend that ITS maintain supportive documentation for all purchases equaling or exceeding \$100,000 for a period of time set forth by the ITS director.
7. We recommend that all purchases equaling or exceeding \$100,000 require the written approval of the ITS director.

Reported Actions

4. Implemented. A more stringent Sole Source Request Form and evaluation process has been developed by the Division of Purchasing. Also, a notice of each proposed sole-source is now distributed by e-mail to all known suppliers for comment.
5. Implemented. A cost-benefit analysis is now required on all projects exceeding \$50,000.
6. Implemented. Required documentation is now maintained in both the procurement and project tracking system.
7. Implemented. All purchases exceeding \$100,000 must now be approved electronically by the ITS director within the ITS procurement system.

Statewide Employee Incentives (2004-04)

Cash incentives—while granted on a lesser scale than the private sector—have long been used by state government agencies as a method for rewarding employee performance. However, concerns with incentive awards granted by state agencies were recently reported in the June 2003 limited review of incentive programs (ILR 2003-D, “Review of Tax Commission Employee Incentives and Performance Awards”). This report is in response to the legislative request to perform a follow-up statewide audit of employee incentives. Our objectives were to:

- Determine the extent to which state departments have given performance or incentive compensation in the form of cash or administrative leave.
- Evaluate whether such incentive awards are justified.
- Evaluate whether the awards are consistent with statutory provisions and administrative rules.

- Evaluate whether the awards are appropriate in a time of severe budget shortfalls.

We found that state agencies have reduced cash incentives. In fiscal year 2003, state agencies in Utah combined to grant just under \$3.1 million in cash incentives to employees, as a supplement to regular employee compensation. While this appears to be a sizeable amount of incentives to grant during a lean budget year, it also represents a 48 percent decrease from the \$5.9 million in cash incentives granted two years previous, in fiscal year 2001.

Our more limited review of incentives granted for the first half of fiscal year 2004 (July to December 2003) continues to show a downward trend. We forecast that fiscal year 2004 incentive totals could be about \$1.6 million, a 48 percent decrease from \$3.1 million in fiscal year 2003.

Our review of the cash incentives for fiscal year 2003 also shows:

- the state General Fund is the source of almost all incentives,
- the average incentive for an employee was under \$400,
- aggregate incentives amount to about 0.4 percent of the state's payroll (\$3.1 million incentives of over \$700 million in payroll),
- several agencies gave incentives to a majority of their employees,
- some agencies increased incentive spending since fiscal year 2001.

To further review the cash incentives in fiscal year 2003, we conducted detailed reviews of incentives in a sample of 740 state employees in nine state agencies. These nine agencies accounted for over 82 percent of the incentives granted in fiscal year 2003. We evaluated cash incentives based on criteria included in the Department of Human Resource Management's Incentive Award rule, and found:

1. Some incentives were not based on outstanding performance:
 - agencies granted sick leave incentives and retirement incentives which were not based on work,
 - agencies granted peer-to-peer awards for what appeared to be normal job duties, and
 - agencies granted "blanket" incentives (incentives offered to nearly every employee in a division, office, bureau, etc.).
2. Most incentive amounts were within spending limits set by rule.

3. Documentation varied widely among agencies. In many cases, documentation was not sufficient to show the incentive was based on exceptional effort.

We also used our nine agencies to review administrative leave (time off with pay) as a performance incentive in lieu of cash. It appears that leave incentives are awarded much less frequently than cash incentives. However, weaknesses in the tracking of leave incentives prevented us from providing reliable statewide information about the amount or trend over time of such incentives. Our sample revealed:

1. Similar to the cash incentives, documentation of incentive leave was often insufficient for us to determine if the leave was based on exceptional effort.
2. About 56 percent of “other administrative” (OA) leave—the category which contains incentive leave—is clearly not awarded as a performance incentive. We screened three types of leave to determine possible incentive leave: mis-coded funeral/military, Governor’s holiday, and disciplinary leave.
3. Incentive leave is interpreted and applied inconsistently. We found several categories of possible incentive leave, and other leave that was apparently non-incentives.

Largely in response to our 2003 audit review, DHRM has already enacted rule changes for incentives leave. But, our sample reveals that there is still work to be done to improve DHRM rules and processes.

- Rules for incentive leave are unclear: Current rules do not include incentive leave in “Incentive Award” rules for cash incentives.
- Many state agencies have granted incentives in fiscal year 2004 without an approved policy by DHRM.
- Agencies have incentive programs that are not based on exceptional effort, such as sick leave incentives and retirement incentives.
- Incentive rules lack documentation guidelines adequate to show cost savings and/or exceptional effort.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations

1. We recommend DHRM clarify the rules for “incentive leave” by including

Reported Actions

1. In Process. We will be adopting the criteria of incentive awards into the

Recommendations

the requirements of awarding such leave as part of its Incentive Award Rule.

2. We recommend DHRM consider limiting, in rule, the number of incentive leave hours granted per person, per fiscal year.
3. We recommend DHRM inform agencies who have granted incentives in fiscal year 2004 while having unapproved incentive policies, that they are not in compliance with state rules.
4. We recommend DHRM review the validity of incentive award programs that do not appear to be based on job performance, such as sick leave incentives and retirement incentives. We further recommend that if DHRM determines that factors other than job performance should qualify for incentive awards, that rules be amended to clearly allow for these awards.
5. We recommend DHRM provide more guidelines on acceptable documentation for incentives to ensure that evidence of cost savings and/or exceptional effort is provided.

Reported Actions

incentive leave section of our rules.

2. Implemented. See R477-7-7(1)(C)(iii).
3. Implemented. We have contacted those agencies that have not provided incentive policies to our office. We will also be doing this on an annual basis at the end of each fiscal year.
4. Implemented. See R477-6-5(3) and R477-6-5(4)
5. Implemented. See R477-6-5(3)(I).

Constitutional Defense Fund Expenditures and Administrative Controls (2004-08)

This audit was approved and prioritized by the Legislative Audit Sub-committee based on a request by Representative Jack Seitz. The primary purpose of the audit is to provide information on two questions:

- Have expenditures made from Constitutional Defense Fund appropriations met legislative intent?
- Has the Constitutional Defense Council held meetings as required by the *Utah Code*?

Most Expenditures Follow Legislative Intent. Constitutional Defense Fund appropriations have followed legislative intent. Specifically, the vast majority of the appropriations have been placed in the RS-2477 Rights-of-way account held within the Governor's office. Based on a limited review, most expenditures made from the RS-2477 Rights-of-way account also appear reasonable given legislative intent. However, we did identify \$62,000 in fiscal year 2003 expenditures which are questionable.

Sharing of Financial Information Can Improve. According to a former RS-2477 managing attorney and staff from the Utah Association of Counties, summary financial information provided by the Governor's office has not been adequate to address county needs and concerns. The counties want specific monthly transaction data that identifies what was paid, to whom it was paid and for what purpose. Since the counties and the state are equal partners in this RS-2477 effort, their request for detailed expenditure information seems reasonable and necessary.

Documentation of Council Meetings Is Poor. The Constitutional Defense Council does not appear to have met quarterly as required by the *Utah Code*. In fact, meeting minutes do not exist between the time periods of August 2001 and October 2002. Further, detailed meeting minutes of all closed Constitutional Defense Council sessions are not available as required by the Utah Open and Public Meetings Act.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations

1. We recommend that only expenditures which meet legislative intent as stated in the *Utah Code* and the RS-2477 Plan be charged to the RS-2477 Rights-of-way account.
2. We recommend that the managing RS-2477 attorney and representatives from both the state and the counties identify:
 - all financial statements which should be generated by the Governor's office,
 - the level of detail for each financial statement, and
 - the reporting schedule for each statement.At a minimum, this financial information should be provided to the managing RS-2477 attorney to enable Plan requirements to be met.
3. We recommend that the RS-2477 Plan be amended to outline RS-2477 budgeting procedures which would maintain an equal partnership between the state and the counties and allow Plan requirements of the managing RS-2477 attorney to be met.
4. We recommend that the Constitutional Defense Council insure that meeting minutes of both open and closed meetings are maintained as required by the Utah Open and Public Meetings Act.
5. We recommend that the Constitutional Defense Council be

Reported Actions

1. This report was completed in November, 2004. Follow-up will be performed in 2005.

Recommendations

Reported Actions

convened as required by the *Utah Code*.

The Division of Facilities Construction and Management (2004-11)

Although the agency had serious problems with one past project, the Division of Facilities Construction and Management (DFCM) has learned from its mistakes. Today the division is a well-managed organization that provides quality construction management services for the state. This report addresses legislator's concerns regarding the mismanagement of the University of Utah Student Housing Project. We found that DFCM, its architect, the University of Utah and several contractors all share responsibility for the problems that occurred on the project. This report also describes how some contractors were impacted financially by the project and the manner in which the division responded to their claims. Finally, this report examines the division's current method of selecting contractors for state construction projects and, in particular, the division's "value-based" approach to awarding state construction contracts.

Due to ongoing litigation, the audit team did not attempt to identify the precise degree that DFCM, the university, the design team, or some contractors were responsible for the problems with the Student Housing Project. To do so would have required an in-depth analysis of the project schedule, the division's management practices, the contracts, and project costs. That level of analysis was not within the scope of this audit.

DFCM Contributed to Problems with the Student Housing Project. First of all, the division did not ensure that the project had an effective management team. In addition, some contractors were not particularly qualified for the scale and scope of work they were hired to do on the project. Numerous delays and cost overruns resulted because of project mismanagement and under-qualified contractors. In addition, DFCM's use of a new method of selecting contractors caused confusion and exacerbated problems between the project management team and contractors.

DFCM's improved management procedures should help the agency avoid repeating the problems it experienced on the Student Housing Project. DFCM had difficulty both managing the Student Housing Project and then responding to the

claims filed by contractors on the project. However, DFCM has since addressed the procedural weaknesses that were exposed by the University of Utah project. First, the division now selects the best qualified construction management teams to oversee state projects. Second, the division now pre-qualifies contractors and does not use low-bid selection on projects valued over \$1.5 million. DFCM has improved general contractor accountability, the management of its projects, and its method of selecting contractors. If the division continues to follow its new practices and the recommendations described below, it is unlikely to have another project with as many problems as the Student Housing Project.

Many Contractors Experienced Financial Difficulties. Delays in the project schedule and confusion about the project's designs increased the cost of construction and led some contractors to file claims with the division. Some contractors filed bankruptcy shortly after their involvement with the Student Housing Project. However, it would be inaccurate to suggest that these firms went bankrupt because of the project. Many of the firms were already facing financial difficulties when the project began and others suffered a financial loss because of their own mistakes. The following recommendations can help DFCM avoid future disputes about the amount of compensation paid to contractors and subcontractors.

DFCM Had Difficulty Resolving the Claims Associated with the Student Housing Project. DFCM spent several years trying to resolve claims associated with the Student Housing Project. Two disputes are still ongoing. DFCM's dispute resolution procedures are supposed to encourage a quick and informal resolution of contractor claims. The disputes took a long time to resolve because the division did not follow its dispute resolution process. Instead, the division's response actually encouraged contractors to take a litigious approach towards resolving their claims.

Today, the division is unlikely to become as entangled in the kind of legal disputes it encountered at the end of the Student Housing Project. As long as the division follows its new dispute resolution policy, future disputes will be solved quickly and informally.

Procurement Process Has Improved but Needs Minor Adjustments. DFCM's new Value Based Selection method of choosing a contractor has produced positive results. In an effort to avoid the failures of the selection procedures used in the past, the division began to award construction contracts based on which contractor offered the best value—not just the lowest bid. Since that time, projects are more likely to be completed on time, within budget and with less spent on change orders than in the past. However, the selection process can be subjective and some contractors question whether the division is entirely fair in how it selects contractors. In order to improve

the fairness of the Value Based Selection process, the division needs to implement the recommendations.

Few Concerns Found with Remaining Audit Issues. Few problems were found with several of the concerns raised by legislators. After a brief review, the audit team determined that:

1. DFCM construction delivery methods are used wisely and according to industry standards,
2. DFCM promptly pays its general contractors,
3. DFCM and its general contractors employ a wide variety of subcontractors on state projects,
4. General contractor conflicts of interest are managed properly, and
5. The Owner Controlled Insurance Program (OCIP) is obsolete since the program was dropped last year.

Because few problems were found, the audit report only briefly describes the audit findings with regard to each of the five above areas of concern.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations

1. We recommend that before each monthly payment is made to the general contractor, the division should require the contractor to submit a “payment waiver” signed by each of the subcontractors attesting that they were paid the prior month
2. We recommend that the division’s project manager periodically do an analysis of the cash flow on the project.
3. Unless it is a design build project, we recommend that bidding documents be completed before contractors are asked to submit their bids.

Reported Actions

1. This report was completed in December 2004. Follow-up will be performed in 2005.

Recommendations

Reported Actions

4. If a change in the designs is needed or if additional work is necessary, we recommend that a formal change order or construction change directive be prepared, and that the terms of reimbursement for the cost of labor and materials be agreed to before the work is performed.
5. We recommend that contractors and subcontractors be put on notice that no compensation will be provided unless they maintain a separate accounting for all of the expenses associated with the change order.
6. We recommend that the division continue to follow its new dispute resolution policies.
7. We recommend that DFCM provide specific, detailed descriptions of the Value Based selection criteria in the project RFP.
8. We recommend that DFCM provide contractors, when requested, with complete and accurate feedback regarding the strengths and weaknesses of their proposals.
9. We recommend DFCM ensure that selection committee base their decisions on the selection criteria described in the request for proposal and avoid considering other factors.
10. We recommend DFCM complete its implementation of the remaining

Recommendations

Reported Actions

Value Based Selection Procurement
Committee's recommendations.

Health and Human Services

Utah's Local Mental Health Systems (2003-05)

State agencies, local mental health authorities (LMHAs), and mental health centers (MHCs) need to provide better assurance that the more than \$132 million in primarily public funds entrusted to the MHCs are being used efficiently and effectively and as dictated by law, policy, and contract terms. Oversight of Utah's local mental health system needs to improve at both county and state levels to ensure that these public funds are used appropriately.

The MHCs may need to improve accountability and adherence to contract provisions and state laws. Improved, coordinated monitoring will provide more information to the governmental units sharing oversight responsibility; better reporting is important to enable assessment of whether the locally operated MHCs efficiently and effectively use the funds they receive from multiple sources.

State and County Oversight of MHCs Needs to Improve

While overall MHC expenditures appear to be appropriate, the lack of detailed information on some activities warrants more oversight by county authorities and state funding agencies. Effective LMHA oversight is hampered by misperceptions among some county officials as to their responsibility and authority over the MHCs. For their part, state funding agencies can do a better job of providing policy direction as well as better coordinating between themselves. The main points of Chapter II include the following:

- LMHAs need to improve oversight of the MHCs.

- MHC information provided to oversight authorities can improve as can LMHA review of that information.
- State policy direction is needed for the development of compliant MHC administrative policies.

Policy Improvements Needed for Untraditional Activities

Public policy clarification is needed for mental health center (MHC) involvement in activities other than direct mental health care. One MHC in particular is involved in projects that extend beyond traditional mental health services. The MHC, not the local mental health authority (LMHA), initiated the move into these untraditional activities. This involvement raises concerns about the best use of scarce public funds, a determination that should be made by the LMHA, not its contractor. Chapter III makes the following main points:

- Policy is needed on MHC involvement in untraditional and non-services investment practices.
- MHC funds support the operations of some external, affiliated nonprofit organizations, including a foundation and a statewide mental health professional association.

Some Administrative Practices Fail to Ensure Best Use of Public Funds

A number of administrative practices at MHCs are of concern. These practices range from the development of employee retention incentive policies to inadequate procurement and contracting controls at some MHCs. Specifically, these main points are covered in Chapter IV:

- A retention incentive plan implemented by one MHC raises concerns because of the increased compensation of a small group of executive staff provided through retirement benefits not available to other MHC employees or to state employees.
- Another retirement-related concern is the enrollment of non-MHC employees in the state retirement system by processing non-employees' payroll through an MHC payroll system.

- Procurement, contracting, record keeping, dual employment, and conflict of interest controls all need improvement.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations	Reported Actions
1. We recommend that DHS (Department of Human Services) and DSAMH (Division of Substance Abuse and Mental Health), in conjunction with UAC (Utah Association of Counties), develop an ongoing training and information dissemination program for the LMHAs (Local Mental Health Authorities) to explain their statutory authority and oversight responsibilities.	1. Implemented
2. We recommend that DHS review state contracts with the local mental health authorities to clarify provisions regarding the authority and responsibility of the authorities for oversight and the requirement for the MHCs to comply with county and state directives.	2. Implemented
3. We recommend that DHS seek to amend the administrative rule governing the funding formula to specify how frequently the population data must be updated.	3. Implemented
4. We recommend that DSAMH develop and promulgate policies in MHC administrative areas, including:	4. In Process. DSAMH drafted administrative policies/rules in the four areas identified in the audit and distributed them to local authorities and CMHC (Community Mental

Recommendations

- a. documentation requirements for expenses such as procurement and contracting,
 - b. appropriateness of non-services activities (non-client affordable housing, loans to affiliates, investment practices that differ from the state's, support of other non-services activities),
 - c. process for MHCs to obtain LMHA approval for activities that go beyond the core mental health services mission, and
 - d. acceptable uses of appropriated funds and fund balances.
5. We recommend that DSAMH improve its governance and oversight reviews to include more in-depth review of MHC operations.
 6. We recommend that DSAMH develop a comprehensive reporting format for use by the MHCs, with emphasis on ensuring adequate data is provided to enable state assessment of MHC operational efficiency as well as service effectiveness.
 7. We recommend that LMHAs develop a common report structure that provides information needed to enable the LMHAs to fulfill oversight responsibilities.
 8. We recommend that the LMHAs include in their contracts with the MHCs any directives from DHS and DOH and relevant statutory

Reported Actions

Health Center) directors for comment in October 2003. It is currently in the process of review.

5. Implemented
6. In Process. DHS collaborated with GOPB (Governor's Office of Planning and Budget), MHC business managers, and UAC to develop an initial common format that is in use for 2004 with plans for any needed revisions in 2005.
7. In Process. This recommendation is being addressed in conjunction with Recommendation 6.
8. In Process. UC drafted contract language in collaboration with DHS.

Recommendations

requirements including, for example, the state's open meeting statute.

9. We recommend that DHS develop policy and LMHAs develop related policies regarding MHC involvement in outside, non-services activities.
10. We recommend that, when needed, guidelines concerning MHC non-services activities and related reporting and oversight requirements be included in contracts.
11. We recommend that LMHAs emphasize to service providers that MHC foundations are required to comply with state investment guidelines.
12. We recommend that a mechanism be developed to ensure that UBHN's budget and operations are subject to LMHA oversight.
13. We recommend that the Legislature direct the Utah Retirement Systems to study the issue of a retention incentive plan to determine whether this practice is acceptable and then report back to the Legislature.
14. We recommend that the Legislature direct the Utah Retirement Systems to review the practice of processing non-employees through a participating employer's payroll to determine whether this practice is

Reported Actions

9. In Process. See Recommendation 4.
10. Not Implemented. This recommendation will be addressed after administrative policies have been finalized.
11. Implemented
12. Implemented
13. Not Implemented
14. Not Implemented. However, the non-affiliated organization addressed in the report has withdrawn from the URS.

Recommendations

Reported Actions

acceptable and then report back to the Legislature.

- | | |
|--|-----------------|
| 15. We recommend that the LMHAs of private, nonprofit MHCs clarify to their service providers the requirement to follow competitive public procurement rules, including procurement of services contracts. | 15. Implemented |
| 16. We recommend that the LMHAs clarify to the service providers their expectations related to conflicts of interest and dual employment issues with the goal of minimizing these occurrences. | 16. Implemented |

Public Employees Health Program (PEHP) and Children's Health Insurance Program (CHIP) (2003-09)

Please refer to page 56 for the digest and recommendations related to this audit.

Judiciary, Law Enforcement & Criminal Justice

The Judicial Conduct Commission Case Review (2003-10)

The Utah Judicial Conduct Commission (JCC), like conduct organizations in all states, plays an important role in the administration of judicial discipline by investigating and conducting confidential hearings regarding complaints against justices and judges. The JCC has another role—to help assure the public that judges are subject to appropriate, nonpartisan oversight of ethical conduct and thereby maintain public confidence in the system. The JCC is functioning but tends to do most of its discipline in private due to constitutional and statutory requirements for

confidentiality. The high level of confidentiality has, in the past, lowered public and Legislature confidence in JCC work. Several statute changes have been made since 2000 addressing some of the concerns that have been raised. The commission's jurisdiction extends to all 392 members of the judiciary system.

The key findings and recommendations of this report include the following:

Complaint Process Needs More Standardized Procedures. Each year the Judicial Conduct Commission (JCC) receives about 100 complaints alleging judicial misconduct. JCC staff review each complaint and determine which appear to violate the Code of Judicial Conduct. Historically, this work has been done with little guidance beyond the JCC's initial statute found in *Utah Code* 78-8. However, legislative changes and Supreme Court Decisions have helped the JCC improve its complaint review process. The current JCC director and staff are making progress in standardizing the complaint acceptance, review and presentation process. The commission and staff are also working on rules and procedures to add more structure to the process.

While all complaints are investigated to some degree, the majority of complaints filed with the Commission are dismissed for lack of evidence of judicial misconduct without notifying the judge that a complaint was filed. In 16 percent of cases, judges are asked to respond to the complaint. Based on the judges' response, the majority of those complaints are also dismissed. District court judges receive twice the number of complaints of other judges. More than half of all judges have never had a complaint filed against them and only a few judges have received multiple complaints.

Although part of the purpose of judicial discipline is to reassure the public that the judiciary does not tolerate judicial misconduct, the JCC does not publicize their actions. This is in contrast to some other states which provide extensive information to the public. In our opinion, this reduces JCC's effectiveness.

Commission Actions Should Be Fair, Consistent and Accountable.

Commissioners adjudicate complaints in confidential meetings based on investigations conducted by JCC staff. Then, by majority vote, determine whether or not there is judicial misconduct. If they determine that there is misconduct, the commissioners choose a disciplinary action called a sanction. Decisions regarding sanctions have been described by another states' supreme court as "collective judgement calls resting on an assessment of the individual facts of each case, as measured against the Code of Judicial Conduct and prior precedents." Of the 695 complaints received since 1997, the Commission has issued 17 formal, public censures and reprimands; 19 informal sanctions; nine informal resolutions; and dismissed 34 complaints with a letter of

admonition, caution or comment to the judge. In addition, three judges resigned in the midst of an investigation.

Commission written decisions are unclear as to how the Commission determines which of the available sanctions to give. Article VIII, Section 13 of the *Utah Constitution* allows five available sanctions – reprimand, censure, suspension, removal, or involuntary retirement and *Utah Code* 78-8-107(2)© allows private reprimands. To ensure that commission decisions are consistent and fair it is important to provide commissioners with historical information and precedent so that they are able to make more informed decisions insuring that they are comparable to previous decisions made in Utah and in other states.

Supreme Court Has Role in Judicial Discipline

Supreme Court review of judicial misconduct cases and imposition of discipline upon judges is required by the Utah Constitution. Prior to 2000, the Commission believed it was required to only send public reprimand orders to the Supreme Court. Many of its orders were, therefore, not forwarded to the Supreme Court for review. In our opinion, informally resolving these cases at the Commission level amounted to usurping the Supreme Court’s authority to review and implement the appropriate sanction. Since May 2000, the JCC has been statutorily required to send all reprimand orders to the Supreme Court. The confidentiality of cases after the Supreme Court review depends on whether the case was resolved formally or informally by the JCC. The Supreme Court has implemented most commission orders without comment but has provided three written opinions to guide the JCC. The Supreme Court may have been hindered in performing their constitutional duty because of binding language in stipulation agreements and the lack of information provided by the JCC. These have been corrected by legislative action.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations	Reported Actions
1. We recommend that the JCC and staff set standard parameters for investigations and put these parameters in their rules.	1. In Process. Proposed rules have been published for comment. The comment period expires on January 14, 2005.
2. We recommend that the staff clearly write charging documents, Notices of Formal Proceedings, Stipulations,	2. Implemented

Recommendations

Reported Actions

Findings of Fact, Conclusions of Law and Order.

- | | |
|--|--|
| 3. We recommend that the JCC and staff provide more informative dismissal letters to complainants. | 3. Implemented |
| 4. We recommend that the JCC and staff set up a formal appeal process. | 4. In Process. Proposed rules have been published for comment. The comment period expires on January 14, 2005. |
| 5. We recommend that staff insure all resolutions be entered into by a vote of the commission. | 5. Implemented |
| 6. We recommend that JCC staff provide information to judges at training conferences regarding the types of complaints that the group is receiving. | 6. Implemented |
| 7. We recommend that JCC staff make sanction decisions and annual reports available on their web site. | 7. Implemented |
| 8. We recommend that the JCC and the We recommend that the JCC update their office brochure and create a brochure for court personnel informing them of their responsibilities during misconduct investigations. | 8. Implemented |
| 9. We recommend that the commission prepare detailed written decisions that logically link factual findings and legal conclusions to the recommended sanction orders. Dissenting opinions should also be clearly documented. | 9. Implemented |

Recommendations

Reported Actions

- | | |
|---|---|
| 10. We recommend that the JCC and the court determine applicable standards for determining the appropriate sanction and what is meant by a “pattern” of misconduct, whether prior informal or private resolutions of complaints may be considered in subsequent proceedings, and what weight should be accorded the judge’s record. | 10. In Process. Proposed rules have been published for comment. The comment period expires on January 14, 2005. |
| 11. We recommend that JCC and Legislature work together to establish guidelines for the use of informal reprimands. | 11. Not Implemented. The Utah Supreme Court disallowed the use of formal reprimands in January 2004. |
| 12. We recommend that JCC staff enter all complaint information into a confidential database that can be used to provide relevant information to Commissioners and to the Supreme Court when requested. | 12. Implemented |
| 13. We recommend that the Supreme Court consider treating sanctions against judges as it does its other decisions and make the information available on the web-site, in the court’s official reporter, and in the regional reporter. | 13. Implemented |
| 14. We recommend that the Supreme Court, in imposing a sanction, consider articulating the factors leading to its decision, particularly if the court disagrees with the sanction recommended by the commission. | 14. Implemented |

Recommendations	Reported Action
15. We recommend that the JCC forward all misconduct cases to the Supreme Court so that the court may implement the appropriate sanction as required by the constitution.	15. Implemented. All JCC recommendations of discipline are filed with the Supreme Court.
16. We recommend that the JCC not put anything in Settlement Stipulations that would bind the Supreme Court.	16. Implemented
17. We recommend that the JCC provide the Supreme Court with complete information on misconduct cases so that the court can fulfill their constitutional authority to implement, reject or modify the commission's recommended order.	17. Implemented

Administrative Office of the Courts (2004-05)

The Judiciary Interim Committee of the Legislature requested an audit of the Administrative Office of the Courts (AOC) in April 2002 after conducting a Sunset (re-authorization) review of the agency. The request included AOC growth and judicial budget prioritization issues as well as issues of education costs, law clerk availability, and task force spending. We believe the Judicial Council can improve the effectiveness of the AOC; improving the information used in the Judicial Council's budgeting and prioritization decisions and addressing communication issues should improve the relationship between the AOC and the judges it supports.

The Judiciary, as one of the three branches of Utah government, is overseen by the constitutionally created Judicial Council, a policy body comprised of judges from each of the state court levels plus representatives of the locally funded Justice Courts and a representative from the Utah Bar Association. The Administrative Office of the Courts, as the staff support office, reports to the Judicial Council and is responsible for implementing the policy decisions made by the council. Although we were asked to review the AOC, the audit request included issues that fell into policy and governance areas, which are the purview of the Judicial Council; thus, some of the discussion in this report extends to the Judicial Council as well.

Summary information about each chapter's findings is provided below.

AOC's Growth Comparable to Rest of Judicial Branch: Based on how we defined the AOC and the historical data we were able to obtain, we estimate that from 1992 to 2002, expenditures increased 29 percent while staff increased by 53 percent. Some judges perceive that the AOC's growth has been excessive; although AOC growth was substantial during the 10 years, the office grew less than the Judiciary as a whole. Our assessment was complicated by the fact that the AOC is not a defined program budgeting and accounting unit, but it includes staff and activities funded through other Judiciary programs. The main differences between our data and those of the AOC can be explained by timing differences in the data used and some definitional differences in positions counted.

Prioritization Process Is Reasonable, But Better Information Is Needed: Some judges are concerned about the fairness of the Judicial Council's budget prioritization process. We found that the process used to prioritize the Judiciary's budget appears to be reasonable, but better information is needed for the process to function optimally. The Judiciary Interim Committee asked us to review how the Judiciary establishes funding priorities. Our concerns are not so much with the process itself as with the budget and expenditure information feeding into the process. This information includes the financial data discussed in Chapter II as well as the results of weighted caseload studies used when determining staffing needs. We believe that improvements can be made in budgeting and expenditure information, including the data that results from the weighted caseload studies, to aid the Judicial Council's budgeting and resource allocation decisions.

Law Clerks Ranked Lower Than Other Judiciary Needs: Although increasing the number of law clerks has been one of the top priorities of the Board of District Court judges in recent years, the Judicial Council has given other needs higher priority in its budget prioritization process. District Court judges overwhelmingly stated that additional law clerks would improve the quality and timeliness of court decisions. While we do not question the value of law clerks, the current law clerk-to-judge ratio shows that Utah is in relatively good shape when compared to nearby states.

Judicial Education Is Valuable But Costly: The Judiciary Interim Committee asked us to determine how much is spent on the education of judges and staff, in part because of concerns that non-essential classes were being provided while clerk jobs were being cut. As discussed in Chapter II, the Judiciary's budget is sometimes confusing. For example, in the education area we found that some costs to educate Appellate and District Court judges are paid through the Juvenile Court budget. Thus, the Judicial Education Program budget includes part but by no means all of the

expense incurred to educate judges and staff. Including amounts from other program budgets, the AOC's Education Department spent about \$562,570 in fiscal year 2002. Added to the funds managed by the Education Department are expenses at the program and district level and the cost of time not devoted to primary duties while in education activities.

Task Force Used Judiciary Resources: The AOC provided over \$72,000 in funds to the Racial and Ethnic Fairness Task Force and Commission through fiscal year 2003. From fiscal years 1997 through 2003, the task force and commission spent approximately \$546,800, while revenue totaled \$556,600 (including AOC contributions), for a balance of almost \$10,000. AOC staff indicate they did not spend all of the fiscal year 2002 state appropriation of \$60,000, which would account for much of the balance. Beyond cash resources, we were unable to identify the cost of employee involvement because task-specific timekeeping is not required at the AOC. We did find that studying racial and ethnic fairness issues is a relatively common activity among judiciaries nationally; studying bias issues seems to be a reasonable activity for Utah's Judiciary to pursue.

Allegations Were Reviewed But Not Substantiated: We reviewed a number of allegations that were brought to our attention by employees or former employees of the AOC. Our review failed to substantiate allegations of mismanagement or improper use of public funds.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations

1. We recommend that the AOC consult with the Judiciary Interim Committee and the Executive Offices, Criminal Justice, and Legislature Appropriations Subcommittee to determine whether it should revise its designation of organizational units to clearly segregate those that constitute the AOC and report staff and expenditures accordingly as part of the Administrative Office Program.
2. We recommend that organizational sub-units of the AOC continue to

Reported Actions

1. This report was completed in May 2004. Follow-up will be performed in 2005.

Recommendations

Reported Actions

identify staff and expenditures that specifically support different courts.

3. We recommend that the Judicial Council use the ongoing program-based budgeting process to comprehensively review the Judiciary's financial organization structure to relocate budget/expense accounts to the program budgets responsible for those activities.
4. We recommend that the Judicial Council determine whether a re-evaluation of council membership is needed to address concerns about the council's composition and voting on budget issues. Any changes they feel are warranted should be forwarded to the Legislature for consideration.
5. We recommend that the Judicial Council consider posting the minutes of its budget meetings on its website.
6. We recommend that the Judicial Council and the AOC continue to encourage and facilitate communication outreach efforts including:
 - a. council member attendance at board of judges meetings, and
 - b. the AOC newsletter.
6. We recommend that the Judicial Council use on-going communication outreach efforts to provide:
 - a. information on the Judicial Council's prioritization process and its philosophy of adopting a

Recommendations

Reported Actions

- system-wide focus on the good of the entire Judiciary to all judges,
 - b. information on the rationale for current council composition and voting rights, and
 - c. information on the important factors in the weighted caseload studies along with information on efforts to improve the studies.
8. We recommend that the AOC and the Weighted Caseload Study Committee take the following steps regarding the weighted caseload studies:
- a. Use actual case data instead of subjective estimates in study formulas when data are available.
 - b. Review the use of urban and rural designations with the goal of achieving consistency among the studies and accurate categorization of court locations.
 - c. Correct other errors as identified in this report to increase the accuracy of these important tools.
 - d. Develop a resource tool (such as a manual or handbook) to describe and document the study and the use of study results. The rationale for assumptions, formulas, methodology, and other important items should be clearly described.
 - e. Ensure that, as data are gathered in future caseload surveys, these raw data be retained by the AOC to enable future verification if needed.
9. We recommend that the Judicial Council proceed with a reconciliation of differences between the District and

Recommendations

Reported Actions

Juvenile Court judicial weighted caseload studies.

10. We recommend that all education costs managed by the A.C.'s Education Program be consolidated and reported as part of the Judicial Education Program.
11. We recommend that the Judicial Council's Education Standing Committee review data on the amount of education actually taken by judges to determine whether the cost of judicial education can be reduced.
12. We recommend that the Judicial Council review their Rule 3-403 and determine whether the minimum number of education hours required of judges, clerks, and other staff should be changed.
13. We recommend that the Judicial Council implement a mechanism to monitor whether clerks and other staff are complying with the education requirements.
14. We recommend that in the future when the Judicial Council authorizes creation of a task force, it should instruct the A.C. on how cost information should be tracked. At a minimum, we recommend expenditures be tracked in dedicated organization codes.

Recommendations

Reported Actions

15. We recommend that the Judicial Council should consider whether time spent by staff or judges on future task forces merits tracking.
16. We recommend that the A.C. Finance Department establish procedural controls to ensure timely collection on account receivables.
17. We recommend that the A.C. communicate to its employees and those of the entire Judiciary the policy requirements to formally declare the possible existence of a conflict of interest to management.

Natural Resources, Agriculture and Environment

Davis and Weber Counties Canal Company (2004-09)

Davis and Weber Counties Canal Company (D & W) is a private non-profit entity that owns and operates a canal that delivers water from Echo and East Canyon Reservoirs via the Weber River for agricultural and residential lawn and garden purposes to users in Davis and Weber Counties.

Concerns have been raised about D & W's financial position and operations by some shareholders and cities involved in the secondary water operations. Due to questions about the company, a performance audit was requested by several legislators. We were asked to address the concerns of the cities and some of the shareholders, and conduct a review of the financial management practices of the company. Following the introduction in Chapter I, Chapters II through V review the following areas:

- Financial management practices,
- General canal operations,

- Secondary operations, and
- Water supply.

This audit was completed to determine what steps D & W should take in order to help improve operations and the financial viability of the company in the future.

D & W Should Rely on Accrual Basis Accounting. In the past D & W has used cash basis accounting. Accrual accounting provides a better indication of earnings and the financial position of the company. When D & W was an agricultural irrigation business with little debt, cash accounting may have been adequate for its needs. However, in recent years D & W has engaged in many transactions with long-term financial consequences that are not adequately recognized under cash basis accounting. For example, the fact that D & W currently has over \$41 million in debt is not reflected in their cash basis statements.

D & W Should Keep Funds Separate. Separate revenue and expense records should be kept for each line of business. D & W is involved with two distinct lines of business: general canal operations and secondary water operations. D & W should also keep a separate fund for purchasing water for the secondary operations, or ask the cities to require new users to purchase or make water available for the secondary systems. Principal funding sources include: shareholder assessments for the general canal operations fund, annual user fees for the secondary operations fund, and secondary hook-up fees for a purchasing water fund, less one time costs associated with new hook-ups. By keeping funds separate, D & W will be able to have a clearer and more accurate financial picture of their operations. As part of managing finances effectively, D & W should budget for their fiscal year and build a reserve fund to cover unforeseen expenses.

Shareholder Assessments Were Set too Low to Cover the Canal Rehabilitation Projects and General Canal Operating Expenses. In order to be a financially viable company, D & W needs to ensure that shareholder assessments accurately reflect their obligations and expenses each year. A financial review of general operations for FY 2003 showed that assessments were too low to cover expenses for the general canal operations. Assessments need to not only meet loan obligations, but also pay for general canal operating expenses— both direct and indirect expenses, and the establishment of a reserve fund for the canal.

D & W currently owes over \$14 million in loans for canal related expenses. D & W has developed a capital improvement plan for 9.1 miles of the canal, which covers over half of the length of the canal. The Utah Board of Water Resources has

authorized D & W to borrow an additional \$15.9 million to make more improvements to the canal in the future.

Water Should Be Fairly Allocated to All Users. In addition to financial equity, water should be allocated to all shareholders fairly. Water meters or other water measuring devices should be considered to fairly allocate water to all users. Of the 67 gates along the canal, 22 gates have meters that can adequately measure water flow. Effective water measuring at the gates will allow D & W to monitor and report water distribution activity through each gate along the canal.

User Fees Cover the Loans for the Secondary Systems and Secondary Operating Expenses. The secondary water systems were built with \$23.5 million in loans from the Utah Board of Water Resources. When the user fees were originally determined, they were set to cover the loan payments, direct operations and maintenance expenses, and an assessment to use D & W's water.

Because the cities have been concerned about the secondary systems subsidizing more than their proportionate share of the company expenses, the auditors and D & W staff developed a methodology to allocate direct and indirect expenses to the secondary operations. For FY 2003 user fees did not cover all of the expenses for the secondary operations. D & W will need to project future expenses and adjust user fees to cover those expenses.

Hook-up Fees Buy Water for the Secondary Operations. D & W collects a hook-up fee from the secondary water users from the cities that D & W serve. This fee has been dedicated to buy water stock to provide water for the secondary systems, less the one-time costs associated with new hook-ups.

Since the beginning of the secondary operations, D & W has collected \$2.9 million in hook-up fees for purchasing water. When the canal breach occurred in 1999, D & W used a significant portion of the revenue from hook-up fees to repair the damage to the hillside in Riverdale. D & W has spent \$1.1 million to buy water stock for the secondary systems.

The secondary operations have had adequate water in the past due to the fact that the secondary systems have been using 4,742 acre feet of water committed from the shareholders; however, there is a concern about the adequacy of the water supply in the future. D & W will need to secure about 18,000 acre feet of water to meet the needs of the cities that D & W serves at build-out. D & W also has a contract with Summit Water Distribution Company (SWDC), which may require D & W to perpetually lease up to 5,000 acre feet of water to SWDC. D & W is working on a plan to secure the needed water for the secondary systems.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations

1. We recommend that D & W use accrual accounting and include statements of financial position, activities, and cash flows in their annual report.
2. We recommend that D & W keep funds separate for the general canal operations, secondary operations, and water purchases.
3. We recommend that D & W's budget year coincide with their fiscal year.
4. We recommend that D & W continue their plan to develop a reserve fund in order to meet unexpected expenses.
5. We recommend that D & W assign direct expenses and use a formula to allocate indirect expenses to the company's general canal operations.
6. We recommend that D & W set shareholders assessments to cover expenses for the general canal operations.
7. We recommend that D & W continue to develop and complete capital improvement plans as needed to keep the canal in good condition.
8. We recommend that D & W consider using additional water meters or other water measuring devices to help ensure water is fairly allocated to all

Reported Actions

1. This report was completed in December 2004. Follow-up will be performed in 2005.

users.

Reported Actions

Recommendations

9. We recommend that D & W assign direct expenses and use a formula to allocate indirect expenses to the secondary operations.
10. We recommend that D & W, with the cities, set user fees to cover expenses for the secondary operations.
11. We recommend that D & W develop and complete capital improvements plans for the secondary systems as needed.
12. We recommend that D & W keep hook-up fees, less one-time costs associated with hook-ups, in a separate fund to purchase water stock.
13. We recommend that D & W make an effort to renegotiate their contracts with the cities to require new users of the secondary systems to provide the water.
14. We recommend that D & W determine how much water they have to deliver to SWDC, and develop a strategy to make the water available under the terms of the contract.

Retirement and Independent Entities

Public Employees Health Program (PEHP) and Children's Health Insurance Program (CHIP) (2003-09)

The Public Employees Health Program (PEHP) is a non-profit, self-funded trust managed by the Utah State Retirement Board. PEHP administers health and other insurance for the State of Utah and other public agencies. PEHP offers all benefit plans on a self-funded basis to decrease some of the variable costs and maintain lower fixed costs by managing the risk for employers. Current insurance coverage appears to be competitively attractive to state employees.

PEHP offers high-quality, yet cost-effective, health insurance for its covered employers; but some improvements can be made to benefit the state and its members. Following the introduction in Chapter I, Chapters II through V review the following areas:

- Premium trends,
- Use of services,
- Contracted fees with health providers,
- Employee benefits,
- Administrative costs, and
- Internal operations.

This report also reviews the Children's Health Insurance Program (CHIP) administered by the Department of Health. CHIP contracts with two health care networks, PEHP and another insurance carrier, to assist families that are financially struggling to provide adequate health insurance for their children. CHIP is discussed in Chapter VI of this report. Chapters II through VI are summarized below.

State of Utah Premium Rate Increases Are Similar to Increases in National Trends. Utah premiums increased an average of 10 percent annually the last five years; national premiums increased 8 percent annually. In 2002, workers nationally were paying an average employee premium cost share of \$174 (a 16 percent increase from 2001 levels) per month for family coverage. State of Utah employees were paying family premium costs for the Preferred Care plan of \$52 (a 12 percent increase from 2001 levels) per month. On average, workers throughout the country are paying 27 percent of their family coverage premium, more than four times that paid by a Utah employee.

Utah members use more medical and pharmaceutical benefits per member than other PEHP employer groups. Since 1998, State of Utah usage of medical services grew 44 percent while PEHP's other employer groups utilized 20 percent more services. Increased utilization of services is a major contributor to increased insurance premiums.

PEHP Controls Costs and Offers Good Benefits. PEHP's benefits and costs to the state and its employees appear to be competitively attractive compared within the local industry and with other states. PEHP's low administrative costs, low to mid-range claim costs, and mid-range contracted fees for services, exhibit PEHP efforts to maintain a cost-effective insurance program.

Utah employees receive excellent benefits compared to the other states surveyed for this audit. Utah contributes the largest employer percentage of the monthly premium and state employees generally have lower co-payments for basic medical services. Although Utah benefits are good compared to intrastate carriers and other states, employee benefits have declined since 1998.

PEHP Can Take Steps to Be More Cost Effective. Several of PEHP's operations and programs were reviewed in accordance with the audit objectives to determine if PEHP is managed effectively. Overall, PEHP is well managed, but further efforts can be made. PEHP should continue to monitor administrative costs, especially large and/or fast growing line-items. PEHP can better follow its procurement policies and procedures to appropriately acquire goods and services. PEHP should consider enhancing their smoking cessation program that would benefit members and provide cost benefits to PEHP. In 2002, PEHP recovered over \$450,000 in adjustor overpayments to health providers. PEHP should continue to look for additional ways to recover overpayments.

PEHP Can Increase Pharmacy Benefit Cost Savings. Nationally, prescription drug costs have increased 19 percent annually since 1999. PEHP needs to be more aggressive in its efforts to control pharmacy benefit costs. PEHP's ongoing cost-containment efforts include adopting increased co-insurance rates, negotiating better rebates and networks, and the addition of a specialty drug program. However, further effort is needed. PEHP should consider implementing a four-tier formulary and percentage payment structure in the future. Such a change would have saved PEHP \$1.3 million in fiscal year 2003. Also, initiating audits of their pharmacy benefits manager will help PEHP monitor and continuously improve the pharmacy benefit.

CHIP Can Negotiate Contracts More Aggressively. CHIP provides health insurance coverage for about 28,000 children. One of CHIP's responsibilities is to provide age-appropriate vaccinations for all members. Currently, CHIP expends nearly

\$400,000 per year for vaccines it has already purchased. Contract oversights from CHIP administration led to the forfeiture of \$160,000 in reimbursements from an insurance carrier. In addition, CHIP should explore utilizing HMO plans where available to provide plan options for its members and realize some cost savings.

During the 2003 General Session, HB 72 was passed and state funding for CHIP was increased by \$1.5 million. This increase allows CHIP to draw an additional \$6 million in federal funding. This additional \$7.5 million restored dental benefits and insures an additional 4,000 children.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations	Reported Actions
1. We recommend that the Legislature continue to review employee compensation packages and make benefit and salary adjustments as necessary.	1. Implemented
2. We recommend that PEHP monitor changes and trends in administrative costs by line item to determine if changes or trends are appropriate and consistent with PEHP's objectives.	2. Implemented
3. We recommend that PEHP follow their established procurement policies and procedures.	3. Implemented
4. We recommend that PEHP require the following: <ul style="list-style-type: none">• a written contract for services with consultants, insurance carriers, and health providers,• a rebidding process for long-term contracts to assure that PEHP is acquiring the best service for the least cost, and• a conflict of interest disclosure statement on all contracts.	4. Implemented

Recommendations

5. We recommend that PEHP avoid related-party transactions.
6. We recommend that PEHP consider enhancing its smoking cessation program.
7. We recommend that PEHP continue to look for additional ways to recover overpayments sent to health providers.
8. We recommend PEHP consider implementing a four-tier formulary and percentage payment structure.
9. We recommend PEHP develop more incentives to increase generic drug utilization.
10. We recommend PEHP continue to develop audit policies and procedures in order to conduct regular reviews of the current pharmacy benefit manager. PEHP should consider implementing the following:
 - a. PEHP audit tests should occur at least once a year using the guidelines as outlined by PEHP's audit policy.

Reported Actions

5. Implemented
6. Implemented
7. In Process. PEHP has identified ways to streamline the request process, restructured screens for better tracking of trends in overpayments for future prevention, and automated the offset process in order to recover overpayments in a shorter period of time. These changes are currently in process of being implemented.
8. Partially Implemented. In 2004, PEHP moved to a 3-tier coinsurance program. PEHP will be implementing a Specialty Drug Program in 2005; as a result, PEHP may create another tier for Specialty Drug Benefits.
9. Implemented
10. See Below...
 - a. In Process. PEHP auditing of pharmacy claims is being done on an exception basis; yet, to be

Recommendations

Reported Actions

implemented is the on-going random audit of pharmacy claims.

- b. External audits of PEHP's PBM should occur at least once during the contracted period, preferably before any contract renewal.

- b. Implemented. An external audit of PEHP's PBM has been completed. The audit contract provides for on-going periodic audits of the PBM.

- c. PEHP should conduct a thorough analysis of their mail-order benefit.

- c. In Process. As part of a recent offer for a new contract from the PBM, PEHP will complete an analysis of the mail-order benefit.

- 11. We recommend that CHIP make contract provisions to protect itself from paying twice for vaccines.

- 11. Implemented

- 12. We recommend that CHIP explore the possibility of utilizing the HMO plans in the rural areas of the state.

- 12. Implemented

Revenue and Taxation

Tax Commission's Division of Taxpayer Services (2003-08)

The Utah State Tax Commission (Tax Commission), with just over 800 employees, provides a vital function by overseeing tax laws, administering taxes and collecting various tax revenues for state and local governments in Utah. In 2002, the Tax Commission collected \$4.6 billion in state and local revenues to pay for many public services.

Because of the broad tax administration powers given to the Tax Commission, and the varied citizen responses to tax laws, auditing and collection, the Tax Commission is often the target of controversy. This audit report responds to some of this controversy, in the form of allegations made by a citizen group and by some Tax Commission

employees. However, most of the audit findings and recommendations focus on Tax Commission collections methods and activities.

Despite allegations made against the Tax Commission of poor tax notifications and adversarial treatment—as well as voluminous other complaints—we believe the Tax Commission is treating taxpayers fairly. For the most part, the group of citizens that brought forth allegations lacked both credibility and supporting evidence for their allegations. They lacked credibility because they misinterpreted laws, cited nonsensical arguments and appeared to be challenging taxes outright. Although the group promised supporting evidence in the form of “hundreds of cases” which they claimed would show Tax Commission mistreatment, they never produced the cases. Still, we reviewed two major allegations:

First, we believe the allegation that the Tax Commission has an inadequate system of notifications is unfounded. We sampled numerous cases of taxpayers and found no evidence of inadequate notification. In fact, the Tax Commission gives more notification than required by statute.

Second, we reviewed whether the Tax Commission is too adversarial with appeals and believe this allegation is largely unfounded, as well. Over the last six years, the vast majority of appeals (95 percent) are handled informally, prior to formal hearings which are, often times, adversarial. In our view, the Tax Commission gives ample opportunity for taxpayers to resolve concerns through several non-adjudicative appeal procedures, as well as a formal, quasi-judicial hearing for those who seek a more formal review. It is clear that the format of the formal hearing is allowed under statute and is, by its very nature, an adversarial process.

There is a lack of screening for delinquent tax accounts within the Taxpayer Services Division (the division) at the Tax Commission. This inadequate screening is occurring in two significant areas.

- First, with cases that have liens close to expiration.
- Second, with cases that are being routed to outside collections agencies (OCAs).

First, inadequate screening occurs which allows liens that have been placed on accounts to expire without properly determining if the liens should be reissued. In many cases, there are potential assets that might have been garnished and other levy sources available to the division if the liens had been reissued to secure the division’s ability to collect. In our estimation, these accounts with liens expiring in 2002 are valued at about \$20 million in delinquent taxes owed to the state. Our test of these accounts indicate that as much as \$3.9 million in potential revenues could have been pursued by the Tax Commission. Further, we believe many of the delinquent taxpayers

in our sample had significant enough income or assets that the division should aggressively collect these debts.

Second, inadequate screening also occurs on cases that are sent to the outside collection agency (OCA), screening which should determine if there are assets that could be garnished by the division prior to being sent to the OCA. We sampled cases that were worked by division collectors—cases which were believed to not have income sources from which to collect—which were therefore sent to the OCA. We found income sources on an average of 47 percent of the cases from 1998 to 2000. Overall, the cases that are currently residing in OCA account for almost \$64 million dollars in delinquent accounts. Some portion of this amount could represent potential revenue for the state.

Improved compliance procedures could also benefit the state through potentially increased delinquent tax collections and better tax compliance. Chapter IV suggests that further review is needed in the four following areas in which we performed more limited audit work, but believe are suitable for mention in this report.

- First, there appears to be a growing number of businesses that fail to remit sales and withholding tax which, we believe, the Tax Commission should seek to hold more accountable.
- Second, by improving the screening of sales tax applicants, the Tax Commission could prevent some potential delinquent sales tax accounts from even being created.
- Third, the Tax Commission could also consider decreasing the time it takes to secure liens on delinquent taxes, in order to more quickly protect state interests and potentially increase revenues.
- Fourth, we have been told by the Tax Commission that revenues for the state could be potentially increased if they and the Department of Commerce could coordinate federal identification numbers on some businesses, in order to track some businesses that fail to file with the Tax Commission and subsequently do not pay corporate taxes.

Several years after implementation of the new collections system (the Computer Assisted Collection System for Government, or CACSG), which was meant to greatly enhance revenues and increase productivity, the Taxpayer Services Division's collection of delinquent taxes is not as productive as it should be. We have identified three major concerns that contribute to inefficiency within the collections process:

- First, current accountability and productivity measures are inadequate. Specifically, the division's use of "quality contacts" is inefficient as a unit of measure for productivity.
- Second, the division needs to remedy workload problems among district collection agents and within the bankruptcy section.
- Third, there is a major breakdown of communication and trust between many of the division employees and management, which is negatively affecting productivity and the work environment.

During a period of district workload inefficiency and productivity problems almost all employees (99 percent) of the Taxpayer Services Division (division) received performance or incentive compensation in the form of cash or administrative leave. This scenario presents two concerns:

- First, the performance and incentive compensation does not appear to be based on criteria of excelled performance, and
- Second, it comes at a time of severe state budget shortfalls.

In 2002, the Tax Commission either paid-out in cash or gave administrative leave to employees as incentives awards valuing about \$369,594. This total consisted of \$137,001 cash incentive awards paid to employees in calendar year 2002 and \$232,563 in leave hour incentives (about 9,000 hours of administrative leave) given in fiscal year 2002. Likewise, we also found other state agencies giving costly incentives during current times of state budget shortage.

Clearly, we believe that state incentive and performance awards, when administered correctly, are not only appropriate, but are essential for a healthy work environment. We agree that *select* state employees need and deserve work incentives, but such incentives should be significantly reduced in tight budget times and given with extreme care based upon outstanding or superior productivity. However, we believe this is not the case because the Tax Commission is giving incentive awards to such a large number of employees.

Long-held tension between many employees in the Taxpayer Services Division and their division management team needs to be resolved. This tension has taken a seeming toll on division productivity and has contributed to a negative work environment. It appears to be based in a major breakdown of communication and trust between division employees and management. In fact, some complaints from employees were severe enough to allege that some delinquent taxpayers were being given preferential treatment by management. While our audit review shows these allegations to be

unsubstantiated, other concerns about case management oversight and division procedures were revealed, as has been discussed in the past chapters of this report.

In an attempt to validate these concerns, and at the request of Tax Commission officials, we surveyed division employees regarding their job satisfaction. This survey focused on employees' view of two-way communication and trust, and how they were valued in the eyes of division management. The results show that a majority of respondents have negative views of division management, with 65 percent of respondents (78 of 120) *disagreeing* that "management helps contribute to a positive work environment." While we recognize that division management has begun to make course corrections, healing may be improbable without department-level intervention.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations

1. We recommend the Tax Commissioners continue to utilize informal procedures in appeals.
2. We recommend the Tax Commissioners' staff in the Appeals Unit more consistently record the final disposition method in the appeals database in order to provide complete information on appeals procedures used.
3. We recommend the Tax Commission track liens which are near expiration and create procedures and criteria for determining whether any liens should be reissued prior to expiration.
4. We recommend the Tax Commission assign a collections agent to screen the

Reported Actions

1. Implemented. The Tax Commission continues to utilize informal proceedings in appeals, as well as seek new and improved procedures to keep the appeals process as informal as possible.
2. In Process. A focus group at the Tax Commission has been created and meet on a weekly basis for the purpose of creating in-house procedures to keep the staff consistent in creating, maintaining, and updating the information contained in the appeal database.
3. Implemented. Beginning March 2003, a team began a regular review of expiring liens and is a part of their regular work processes. For FY 2004, 1901 lien periods were reviewed and 378 were reissued (19.8%).
4. Implemented. See comments for Recommendation 3. In August

Recommendations

expiring liens, using the STAXS program or other sufficient means of identifying levy sources. We further recommend that the commission more fully incorporate the use of STAXS in all relevant facets of the collection process.

5. We recommend the Tax Commission, upon developing the lien renewal procedure identified in Recommendation 1, more aggressively pursue collection on cases which show levy sources.
6. We recommend the Tax Commission review areas of the tax code which govern lien administration and enforceability in order to strengthen their use of this compliance tool. Specifically, the Tax Commission should review:
 - lien prioritization,
 - the length of time that is limiting lien placement, and
 - length of lien enforceability.
7. We recommend that the Legislature consider forming a study committee to review issues of lien prioritization, statutory time limits on lien placement, the length of time a lien remains enforceable and other statutory tax areas deemed appropriate for review.
8. We recommend the Tax Commission review their policies and procedures or screening cases sent to outside

Reported Actions

2004, an internal review of this process was conducted to measure its effectiveness. Of the liens reissued in FY2004, only 1.83 percent of the lien liability was able to be collected. (\$35,500).

5. Implemented. In August 2004, an internal review of this process was conducted to measure its effectiveness. Of the liens reissued in FY 2004, only 1.83 percent of the lien liability was able to be collected as of the review date.
6. In Process. The Tax Commission has drafted legislation that will address these issues and allow the issues identified to be corrected by statute changes. They are currently working with a sponsor to bring the proposed legislation forward in the 2005 General Session.
7. In Process. See comments on Recommendation #6.
8. In Process. Pilot Project is in process to review all cases and new liability periods prior to outsourcing to

Recommendations

collections agencies (OCAs) to determine whether adequate levy sources exist before sending cases out. We further recommend that this policy include more widespread use of the STAXS system for researching levy sources.

9. We recommend that the Tax Commission review whether they can strengthen current sanctions and deterrents for businesses and their officers who fail to remit sales and withholding taxes.
10. We recommend the Tax Commission review the sales tax application criteria needed for receiving a sales tax license, in order to prohibit businesses with tax delinquencies from opening new sales tax accounts.
11. We recommend that the Tax Commission consider expediting the lien process by following through on their intent to discontinue sending the second of three notices regarding delinquent tax, particularly since this second notice is not required by law.
12. We recommend that the Tax Commission review its billing cycle and determine how it can be structured so that the time between notices is shortened in order to further expedite the lien process.
13. We recommend that the Tax Commission work further with the Department of Commerce about

Reported Actions

identify potential revenue sources for collection.

9. In Process. The Tax Commission has drafted legislation for the 2005 General Session that will accommodate statute changes to strengthen this process.
10. In Process. The Tax Commission has drafted legislation for the 2005 General Session that will accommodate statute changes to strengthen this process.
11. Implemented. This recommendation was implemented in January 2004.
12. Implemented. This recommendation was implemented in October 2003.
13. In Process. The Tax Commission has been working with Commerce to identify ways to capture and exchange

Recommendations

having them gather federal ID numbers when corporations register, so that the Tax Commission can track corporations that do not file corporate taxes.

14. We recommend that the Tax Commission's executive and division-level management work together to develop measures (such as "cases closed" and/or "dollars collected") of productivity and accountability to be used within the collections sections, which would replace the "quality contact" measure.
15. We recommend that the Legislature and the Tax Commissioners determine whether the measures of productivity and accountability recommended by management are acceptable.
16. We recommend that the Taxpayer Services Division examine the workload among district collections agents. Particularly, the division should:
 - review the case workloads of the district collections agents and consider increasing their managed cases.
 - consider making all cases wholly assigned, rather than working from a pooled environment,
 - consider increasing staff to the bankruptcy section.

Reported Actions

this information without compromising disclosure rules. This may require legislation by Commerce, but may not be possible due to the public nature of all Commerce data.

14. Implemented. The Tax Commission is now using "cases closed" as a measure.
15. In Process. The Tax Commission has sent a letter on January 26, 2004, to the Legislature requesting suggestions for measuring productivity and accountability.
16. Implemented
 - Case work loads have been reviewed to see if they can be increased.
 - As of April 2003, all district agents have assigned case inventories and the pooled case environment is no longer applicable in the districts.
 - Not Implemented. Increasing staff in the Bankruptcy Unit is not

Recommendations

Reported Actions

viewed as an option. The division has implemented other case management options that will allow for better management of the cases in bankruptcy.

17. We recommend that the Tax Commission *not* consider staffing increases in collections until they have fully utilized existing staff as outlined in Recommendation 3.

17. Implemented. Increasing staff has not occurred.

18. We recommend the Legislature consider reviewing the appropriateness of the Tax Commission's level of aggressiveness, particularly as it pertains to collection of delinquent tax. We further recommend the Legislature determine whether additional policy direction is needed for the Tax Commission.

18. Implemented. There has been legislation presented on tax collection, as well as interim study items directed at tax collection since this audit.

19. We recommend the Tax Commission review the incentive and performance award programs, particularly within the Taxpayer Services Division. We strongly recommend that the review criteria include:

- basing the incentives and rewards on exceptional performance of work-related duties,
- limiting frequency of incentives and rewards,
- giving the division director approval power, and
- closely monitoring the fiscal impact of incentives and rewards, particularly during state budget scarcity.

19. Implemented. The Tax Commission has modified its new Incentive programs and has eliminated the "Star Award Program." These programs have been approved by DHRM.

Recommendations

20. We recommend the Department of Human Resource Management review the reasonableness and frequency of recently given employee incentives within state agencies.
20. We recommend the Department of Human Resource Management develop guidelines for appropriate use of cash and administrative leave incentives during lean budget years.
21. We recommend the Legislature consider a full audit of whether state agencies' use of cash and administrative leave incentives during recent lean budget years was appropriate.
22. We recommend that Tax Commission department executives take decisive action to remedy the troubled work environment and the negative relations which exist between Taxpayer Services Division employees and management.

Reported Actions

20. Implemented. DHRM reviewed and "tightened up" its rules regarding appropriate use of incentive awards, which were effective July 1, 2003.
21. Implemented. In addition to tightening up its incentives rules, DHRM is currently working with agencies to assure appropriate incentive policies are in place.
22. Implemented. The Legislature did request a full audit. The audit was released in February 2004, "A Performance Audit of Statewide Employee Incentives."
23. In Process. The Executive Director and the Division Director have been involved in a process to address ways to improve the work environment. There are regular meetings with an Employee Focus Group and a Supervisor Focus Group which have been very encouraging.

Division of Motor Vehicles (2004-02)

The Tax Commission's Division of Motor Vehicles (DMV) has improved its efficiency over the last ten years. But, while it has made improvements, the DMV can better portray the cost of collecting revenues from vehicle transaction fees for the fee beneficiaries or recipients.

DMV is responsible for fee collections that support a number of state and county operations. Its centralized organizational structure was legislatively set to increase collection efficiency. The division's workload has increased dramatically in the last

decade with annual transactions rising from 1.71 million in 1992 to 2.44 million in 2003. The division now collects about \$325 million in revenue a year.

Process-based Cost Identification Is Appropriate

DMV's operational costs are appropriately identified by a process-based allocation. In such an allocation system, the user share of cost is directly tied to the operational time and effort associated with that user—not with the amount of fees collected. Additionally, this process-based allocation includes all related Tax Commission direct costs that support the division's collection operation.

Under the process-based allocation system developed by the Office of the Legislative Auditor General (OLAG), 53.7 percent of DMV's workload is devoted to collecting fees for the Utah Department of Transportation (UDOT). Thus, 53.7 percent of the Tax Commission's motor vehicle fee collection costs would be allocated to UDOT under this system. OLAG's process-based allocation system also assigns costs to ten other beneficiaries of Tax Commission's collection efforts.

The DMV Has Made Significant Improvements to Operations and Customer Service

As a result of legislative changes and improved processes, Utah's state/county motor vehicle registration system processes more transactions while using fewer staff than at any other time over the past ten years. Further, customer counter times for renewals is 40 percent faster now with the new Motor Vehicle Administration (MVA) system in place. Along with this improvement, customer line wait times have also declined an average of 17 percent. In fact, one Salt Lake office reduced its line wait time from 44 minutes in 2001 to 24 minutes in 2003, a 20 minute reduction.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations

1. We recommend that if the Legislature chooses to allocate DMV costs to user agencies that they select a process-based cost identification system to

Reported Actions

1. Not Implemented. To date the Legislature has not chosen to reallocate DMV costs among user agencies.

Recommendations

Reported Actions

better reflect the actual cost of fee collections.

2. We recommend that if the Legislature chooses a process-based cost allocation that direct motor vehicle costs contained within other Tax Commission divisions be included in the cost allocation.

2. See Recommendation 1

3. We recommend that the Tax Commission identify direct motor vehicle costs contained within other Tax Commission divisions.

3. See Recommendation 1

4. The DMV should continue to explore and implement customer service improvements to alleviate periods of in-office, high customer volume.

4. Implemented. The DMV installed faster computers and printers in all motor vehicle offices and a customer calling system in the Provo Office.

Transportation, Public Utilities & Technology

Division of Motor Vehicles (2004-02)

Please refer to page 69 for the digest and recommendations related to this audit.

Department of Environmental Quality's Commercial Waste Facility Oversight (2004-06)

Regulatory oversight of hazardous and radioactive waste disposal in Utah appears to adequately follow safeguards for the health and safety of Utah's population. The Utah Department of Environmental Quality (DEQ) follows federal regulations and state laws as delineated in the *Utah Code*. There are, however, concerns with some

questionable operating procedures and accessibility of information that may limit DEQ's program effectiveness.

The department's oversight of commercial waste disposal sites requires a complex organizational structure that must be capable of dealing with complicated regulations and site operations. Oversight is further complicated because environmental issues have always raised some degree of public concern. This concern begins with the very nature of DEQ's mission statement of both protecting the environment and aiding in economic development. This charge, combined with the unique ownership, waste streams, and history of one of the state's primary waste disposal sites, creates concerns. The concerns have been further fueled by a perceived lack of departmental administrative controls and, at times, a lack of readily accessible information.

This audit was requested by the Utah Hazardous Waste Regulation and Tax Policy Legislative Task Force. The task force requested that the Office of the Legislative Auditor General determine:

- If state-licensed radioactive, solid, and hazardous waste disposal facilities are regulated according to, and in compliance with, Utah statutory requirements.
- If Utah's regulatory requirements are adequate to provide effective management of state environmental concerns.
- If established fees are used in accordance with state statute and are sufficient for the department's operational needs.

DEQ Administrative Support of Waste Disposal Oversight Needs

Improvement. The Department of Environmental Quality (DEQ) lacks a coordinated, written plan to guide its divisions' oversight of commercial waste disposal facilities. A clearly developed, risk-based, plan could better guide budgetary decisions. Such a plan should address fee fluctuations and the department's current reliance on the diminishing Environmental Quality Restricted Account (EQRA). On a positive note, DEQ's oversight of site financial assurances appears appropriate.

DEQ Should Review Adequacy of Funds to Improve Operational Efficiency.

The department reported to the Hazardous Waste Regulation and Tax Policy Task Force that certain oversight activities are conducted annually when, in fact, during tight budget years they have not been performed. Adequate funding for future oversight of waste disposal programs is a concern that can be addressed, in part, with regular DEQ audits of waste disposal fees. Our review indicates that information gained in fee audits could increase revenues available for oversight programs. Improvements are also

needed in information storage/retrieval management and information available for future fee setting.

Performance of the Division of Radiation Control's (DRC) Groundwater Oversight Program Raises Questions. Oversight of commercial waste disposal programs is in large part done by a variety of inspections and monitoring programs. We reviewed DRC's groundwater sampling assurance program and are concerned with: 1) well sample selection which has been cost-based not risk-based, 2) less frequent sampling than reported, and 3) elimination or reduction of sampling as budgeted funds are used elsewhere.

Inspection Programs Appear Effective and Seem to Meet Current Health-safety Needs. DRC inspectors appear to be thorough and effective in addressing health-safety needs. DRC inspections have been broken down into manageable "modules" that have been approved for content and effectiveness by the U.S. Nuclear Regulatory Commission (NRC).

The Division of Solid and Hazardous Waste (DSHW) Can Improve Disposal Facility Oversight. In contrast to DRC inspections, DSHW does not utilize a written inspection plan. Rather, the division relies on the expertise of its staff. As a result, there is neither a formal risk assessment nor tracking of violation trends to guide DSHW activities.

DEQ Administrative Controls Can Improve. Oversight functions can be improved with additional administrative control of information and improved fee collection from waste disposal facilities. Currently, DRC's lack of an integrated information system prevents easy access to information such as the tracking of notices of violations (NOVs). This concern has also been voiced by the NRC. Additional controls, primarily in fee collections, are necessary if the state is to fully collect the legislatively set fees. Our review found substantial under-payments. Clarification and improved policies regarding fee collections would better transmit legislative intent to the department and to the disposal site operators.

Fee Collection Regulations Need Clarification. Clarification of state statute and formalization of departmental policies could provide the state with increased revenues without changing the existing fee structure. As an example, facility operators have elected to either not follow or reinterpret state statute to reduce fee payments. The department was not aware of the altered practice of the facilities. In another instance, the department has used an informal policy to not collect all the legislatively established fees in cases where multiple fees apply.

The recommendations made and reported actions taken as of December 2004 follow:

Recommendations

1. We recommend the Legislature review the *Utah Code* outlining the EQRA account to clarify legislative intent.
2. We recommend the DEQ formalize its oversight plans and include prioritization, risk assessment and necessary funding levels.
3. We recommend the department ensure that its oversight plans are coordinated between divisions and kept current.
4. We recommend DRC establish formal policy and practice of a risk-based groundwater split-sampling program.
5. We recommend that DSHW design and implement written, uniform, annual inspection plans.
6. We recommend the Legislature study DSHW's penalties to determine appropriate maximum fine levels.
7. We recommend that DSHW sample treated waste to ensure that it meets treatment standards.
8. We recommend that DRC create a position to maintain its information systems.
9. We recommend that the facilities submit monthly fee reports in a more user-friendly format.

Reported Actions

1. This report was completed in May 2004. Follow-up will be performed in 2005.

Recommendations

Reported Actions

10. We recommend that DEQ establish a commercial waste facility audit program to provide quality assurance for its regulatory program.
11. We recommend that the Legislature review *Utah Code* 19-6-118, regarding generator fees, and clarify its intent.
12. We recommend DEQ establish a formal written policy specifying fees which facilities should pay for waste that falls under more than one fee category.

Workforce Services, Community and Economic Development

Statewide Employee Incentives (2004-04)

Please refer to page 25 for the digest and recommendations related to this audit.

Decision-making Process Used to Obligate Federal TANF Surplus Funds (2004-07)

The Office of the Legislative Auditor General was asked to review how the Department of Workforce Services (DWS) obligated surplus funds from the federal Temporary Assistance for Needy Families (TANF) grant. Because Fiscal Year 2002 was the last year of the six-year federal TANF grant (beginning in federal fiscal year 1997), DWS sought input on how to best use the accumulated TANF funds before the end of the grant. During General Session 2001 (Fiscal Year 2002), the surplus was projected at \$28 million. Currently (as of March 2004) DWS estimates \$10.5 million federal TANF surplus funds still remain.

We conducted a limited review of the process to determine whether more extensive audit work was necessary and conclude that there was a legitimate public process used to obligate federal TANF surplus funds. We therefore do not recommend further audit work. Specifically, we found:

- **A Legitimate Decision-Making Process Was Followed.** DWS—as the state agency recognized by the federal government for managing TANF funds—along with the Statewide Council on Workforce Services and its regional councils followed a legitimate public process to obligate \$21 million in federal TANF surplus funds.
- **Executive Oversight Existed.** The decision-making process, which occurred in the months prior to General Session 2001, was under the direction of the Governor’s Office of Planning and Budget (GOPB). GOPB reviewed projects to ensure compliance with TANF guidelines and to ensure projects met GOPB intent of “one-time needs.”
- **The Legislature Approved TANF Surplus Projects.** Ultimately, during General Session 2001, the TANF projects prioritized by the State-wide Council were approved by the Commerce & Revenue Appropriations Subcommittee as part of the Fiscal Analyst’s overall budget recommendations.
- **Not All TANF Surplus Funds Were Spent.** Of the \$21 million surplus funds put to the prioritized list, the department has spent \$12 million as of March 2004. (Many projects were placed “on hold” by GOPB when budget shortfalls became apparent in 2001 and have not been pursued.)
- **TANF Surplus is Funding the New “eREP” Eligibility System.** However, in General Session 2002, the remaining funds in the initial prioritization—as well as additional TANF surplus funds—were obligated through legislative intent to replace the Public Assistance Case Management Information System (PACMIS) and create the new “eREP” system (the electronic Resource and Eligibility Product) for TANF and child care eligibility determination. DWS reported to the Legislature in General Session 2004 that approximately \$30 million in federal TANF funding is being used to develop eREP.

The recommendation made and reported action taken as of December 2004 follow:

Recommendations

1. We recommend to the audit subcommittee that no further audit work is necessary on the TANF surplus funds at this time.

Reported Actions

1. This report was completed in September 2004. Follow-up will be performed in 2005.

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IV. Summary of Audits in Process

A number of performance audits are in process at the current time. As the work is completed on these audits, a report will be released which will describe the conditions the auditors found and their recommendations for improvements. The full-length version of the report will be sent to the legislative committee having responsibility for the area audited. In addition, those legislators who are not on the committee will receive a letter summarizing the contents of the full-length report. Copies of the full-length report are available to those legislators, as well, upon request.

To request that an audit be done, a legislator need only submit a request to the Auditor General, John M. Schaff. The Audit Subcommittee gives highest priority to requests from legislative committees, subcommittees and individual legislators. Other audit assignments are developed as a result of committee study assignments, allegations from the public and concerns identified as a result of previous audits. All audit requests are reviewed and approved by the Audit Subcommittee of the Legislative Management Committee.

The audits in process are listed by expected release date. The objectives for each audit are given.

Guardian ad Litem (GAL) (January 2005)

Objective:

1. Review whether the Guardian ad Litem is performing the statutory duties and functioning as directed by Utah Law.
2. Identify possible improvements in the Guardian ad Litem program for the Legislature to consider.

Use of Technology in Education (February 2005)

Objective:

1. Identify the amount of money that has been appropriated to technology in public education.
2. Determine how technology is being used to improve the education of students.
3. Determine if technology related training has kept pace with the purchased hardware.

4. Determine if the public school systems can improve the use of technology that has been purchased.
5. Determine if purchased hardware or technology is being fully utilized.
6. Determine if there are adequately trained support personnel to keep the systems operational.

Civil Case Time Line (February 2005)

Objective:

1. Review the overall timeliness of major civil cases in the District Courts and to determine how District court monitors the timeliness of civil cases.
2. Review the efficiency and effectiveness of District Court's civil case management process.

Interscholastic High School Athletics (February 2005)

Objective:

1. Identify the effectiveness of current student enrollment policies.
2. Determine if high school athletic recruiting is done at the junior high level to avoid enrollment transfer rules.

State Office of Education Budgetary Procedures (April 2005)

Objective:

1. Determine if Legislative intent has been circumvented by the existence and use of the superintendent's discretionary fund within the USOE.
2. Review the use of early retirement stipends within public education.

Child Care Licensing (May 2005)

Objective:

1. Examine the licensing procedures used by the Department of Health for child care centers and determine if the enforcement rules are too strict and if the enforcement practices are too extreme.
2. Determine if the administrative hearing process properly represents the due process of the providers and that hearings are fair and independent.

State Agency Use of Motor Vehicles (June 2005)

Objective:

1. Review the size and use of the state motor vehicle fleet.
2. Determine if the state could be more efficient by centralization of fleet vehicles.
3. Determine if strong internal and management controls exist over vehicles assignments.
4. Test for inappropriate use of state vehicles by state employees.